Docket Entries.

DATE	PROCEEDINGS
Feb. 4	Motion for Leave to Appeal in Forma Pauperis, filed by Petitioner.
Feb. 4	Affidavit of Indigency, filed by Petitioner.
Feb. 4	Motion for Appointment of Counsel, filed by Petitioner.
Feb. 4	Motion for Extension of Time to Order Transcript, filed by Petitioner.
Feb. 4	Motion for Free Transcript, filed by Petitioner.
Feb. 10	Ruling on Petition for a Certificate of Probable Cause, entered. The application for probable cause is denied; and the Court hereby certifies in writing that the petitioner's application to appeal in forma pauperis is denied, in accordance with 28 U.S.C.A. § 1915. Clarie, J. M-2/10/70. Copies mailed to Petitioner and counsel.
Feb. 17	Copy of Application for Certificate of Probable Cause to the U. S. Court of Appeals, Second Circuit, filed by appellee.

Petition for a Writ of Habeas Corpus.

The Petitioner, acting herein by Special Public Defender, alleges as follows:

1. The Petitioner is presently incarcerated in the State Prison at Somers, Connecticut.

2. The cause of his imprisonment arose as follows:

(a) On October 30, 1966 the Petitioner was searched and then arrested without a warrant. Thereafter he was searched for a second time. The State claimed to have seized a gun during the first search and a certain quantity of heroin and certain narcotics paraphernalia during the second search.

(b) On October 31, 1966 the Petitioner was presented before the Second Circuit Court on an Information charging violations of 29-38, 53-206, and 19-246.

(c) On December 8, 1966, a Motion to Suppress was filed (Exhibit A) and a plea of not guilty was entered to all counts.

(d) On December 22, 1966 a hearing was held on said Motion together with a hearing in probable cause at which hearing the Motion was denied and the Court made a finding of probable cause based on the evidence presented on said Motion (a transcript being affixed as Exhibit B).

(e) On April 4, 1967 the Superior Court for Fairfield County heard and denied a second Motion to Suppress.

(f) An April 28, 1967, after a verdict and finding of guilty on a three count Information charging violations of 19-246, 29-35 and 29-38, the Petitioner was sentenced to the State Prison at Somers for not more than six (6) years as a maximum term and not less than three (3) years as a minimum term on the First Count, one (1) year on the Second Count and one (1) year on the Third Count by the Superior Court in and for Fairfield County, Judge Radin presiding.

(g) The Supreme Court of Connecticut affirmed the Petitioner's conviction, *State* v. *Williams,* 157 Conn. (Connecticut Law Journal, 11/12/68).

(h) During the period from October 30, 1968 when the Petitioner was arrested until April 28, 1967 when he commenced his present sentence, he was incarcerated in the Correction Center in Bridgeport in lieu of bond.

3. Prior to this Petition, Petitioner filed a Petition for Habeas Corpus in the Superior Court for Hartford County (a copy of which is attached as Exhibit A-1). On July 23, 1969 the State filed a response (a copy of which is attached as Exhibit B-1). On August 7, 1969 an Amended Petition was filed in the aforesaid action (a copy of which is attached as Exhibit C-1).

4. The Petitioner now claims that his detention is illegal for the following reasons:

(a) The Superior Court lacked jurisdiction over the person of the Petitioner for the reasons that:

(1) His arrest was without warrant and was not based upon probable cause.

(2) The finding of probable cause in the Circuit Court was based on evidence which was the fruit of an illegal search.

(3) Any consent to a finding of probable cause was based on the Court's erroneous denial of the Petitioner's Motion to Suppress.

(b) The Petitioner's conviction was based on evidence which was obtained as the result of two illegal searches.

(c) The Petitioner was denied the effective assistance of counsel for the reasons that:

(1) Petitioner was not afforded the time or means to consult with his court-appointed counsel in the Circuit Court.

(2) Petitioner was not advised of his right to petition for a speedy trial.

(3) Petitioner was ill and was denied adequate medical attention while confined and therefore was unable to adequately participate in his own defense.

(4) Counsel failed to assert his claim of denial of adequate representation on appeal.

(d) Petitioner was denied a speedy trial for the reasons that:

(1) The Petitioner was incarcerated for six (6) months before being brought to trial.

(2) The Petitioner was not advised as to his right to move for a speedy trial and therefore did not waive his right to same.

(3) A portion of the delay in bringing the Petitioner to trial was caused by the State's effort to find evidence to establish its case on the First Count.

5. The Petitioner claims that his present incarceration violates the Fourth, Sixth and Fourteenth Amendments of the United States Constitution.

Wherefore, the Petitioner prays that a Writ of Habeas Corpus issue to bring him before said Court that justice may be done.

Dated at Somers, Connecticut this 11th day of August 1969.

ROBERT WILLIAMS—PETITIONER

By /s/ Robert Williams
Robert Williams—No. 22184
Box 100
Somers, Connecticut 06071

Exhibit "A", Annexed to Petition for a Writ of Habeas Corpus.

CR 2-27188

STATE OF CONNECTICUT CIRCUIT COURT, SECOND CIRCUIT

VS: AT BRIDGEPORT

ROBERT WILLIAMS DECEMBER 8th, 1966.

MOTION TO SUPPRESS CERTAIN EVIDENCE

The defendant, Robert Williams, in the above captioned criminal action now pending before this Court, respectfully requests the Court to suppress, as evidence, certain tangible things seized by the Bridgeport Police Officers on October 31st, 1966, for the following reasons:

I. UNREASONABLE SEARCH AND SEIZURE

Said tangible things were seized as the result of an unreasonable search in violation of Article I, of the Connecticut Constitution, in violation of the 4th and 14th Amendments to the Constitution of the United States and, in violation of Public Act 652, 1963 Public Acts of Connecticut, as amended, in that said search was not made with a search warrant and was made without the consent of the accused.

II. SAID SEARCH AND SEIZURE WAS NOT INCIDENTAL TO A LAWFUL ARREST

Said tangible things were not seized as the result of a search incidental to a lawful arrest.

THE DEFENDANT
ROBERT WILLIAMS

By .....
DOMENICK J. GALLUZZO
RICHARD T. MEEHAN
PUBLIC DEFENDERS
CIRCUIT COURT II

Exhibit "B", Annexed to Petition for a Writ of Habeas Corpus.

HEARING ON MOTION TO SUPPRESS CERTAIN EVIDENCE (1)

CR 2-27188

STATE OF CONNECTICUT — CIRCUIT COURT, 2ND CIRCUIT

VS. — HELD AT BRIDGEPORT

ROBERT WILLIAMS — DECEMBER 22, 1966

BEFORE: HON. GEORGE DI CENZO, Judge.

APPEARANCES:

JOHN EVANS, Esq., Prosecuting Attorney.

DOMENICK GALLUZZO, Esq., Attorney for Defendant.

EMANUEL PALLANT
Official Reporter

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(2) Mr. Evans: This is the case of State vs. Robert Williams, CR-2-27188, represented by Attorney Galluzzo.

The accused is charged with Carrying Weapon in motor vehicle, 29-38; second count, Carrying Concealed Weapon, 53-206; violation of Narcotic Act, 19-246.

He has entered a plea of not guilty. Mr. Galluzzo desires to address the Court.

Exhibit "B", Annexed to Petition for a Writ of Habeas Corpus.

Mr. Galluzzo: If your Honor please, there has been a motion for production and disclosure in which Mr. Evans gave me oral compliance with it, the motion to produce copies of the arrest affidavit and inventory in regard to this present arrest.

Mr. Evans: We complied with whatever Mr. Galluzzo desired. The fact of the matter is, the Court should know and the record should disclose, there was no arrest warrant or search warrant involved in this matter before your Honor.

Mr. Galluzzo: We also have a motion to suppress certain evidence which testimony we are ready to present to your Honor.

Mr. Evans: Mr. Galluzzo and I have discussed this before. The testimony on this motion would be also identical with the testimony, if any, on a hearing in Probable Cause, should the defendant not waive.

Mr. Galluzzo: That is correct, your Honor. If (3) sufficient evidence comes out in the motion to suppress which would indicate probable cause, and if you should deny the motion to suppress, we are willing to waive the hearing in probable cause at this time.

The Court: All right. Proceed.

* * * * * *

JOHN CONNOLLY, 75 Success Avenue, Bridgeport, Connecticut, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Galluzzo:

Q. Are you a regular member of the Bridgeport Police Department? A. I am, sir.

Q. And on the date of October 31, 1966, at about one thirty in the morning, were you then a member of the

Bridgeport Police Department? A. That is the thirtieth, sir.

Q. The night of the thirtieth and the morning of the thirty-first? A. The morning of the thirtieth.

Q. The morning of the thirtieth. Excuse me. A. Yes, I was.

Q. And on that morning, officer, did you have occasion to come across the accused, Mr. Robert Williams, in the vicinity of Hallett Street? A. I did.

Q. At that time, officer, was Mr. Williams sitting in an automobile? A. Yes.

Q. And when you approached this automobile, did you see (4) any act or anything about the possession of Mr. Williams at that time which would indicate that he was involved in the commission of a crime? A. No, sir.

Q. At that time, officer, did you have on your person any arrest warrant or search warrant issued for the arrest of Mr. Robert Williams? A. No, sir.

Q. At that time, officer, did you search this accused, Mr. Robert Williams? A. Yes, sir.

Q. Did you subsequently place him under arrest? A. Yes, sir.

Q. And this was after the search; is that right, officer? A. Yes, sir.

Mr. Galluzzo: No further questions.

Cross Examination by Mr. Evans:

Q. At what time on said date did you receive any information regarding the accused? A. Two fifteen A.M.

Mr. Galluzzo: I object, if your Honor please.

Mr. Evans: I claim it.

Mr. Galluzzo: If he received information regarding—

Exhibit "B", Annexed to Petition for a Writ of Habeas Corpus.

The Court: The officer testified that he made an arrest without any grounds whatever.

Mr. Evans: That is not my understanding of the testimony, your Honor.

The Court: He asked, did you see anything on the defendant that indicated that he was in the commission of any crime, and the answer was, no.

(5) Mr. Evans: That is precisely why this question, this line of interrogation is necessary, to establish for the benefit of the Court how it came about that he ultimately met the accused at that time and place. I will connect it up.

The Court: I will let him answer.

Mr. Evans: There is more than one way to make an arrest, as your Honor well knows.

The Court: You may answer it.

By Mr. Evans:

Q. Do you remember the question, Sergeant? A. Yes, I do.

Q. Will you please answer that. A. Approximately 2:15 a.m. on that day.

Q. You received certain information? A. Yes, sir.

The Court: What day, Sergeant; on the twenty-nineth or thirtieth?

The Witness: The thirtieth.

Q. This was about 2:15, Sergeant? A. Yes, sir.

The Court: Was this after the arrest?

Mr. Evans: No, your Honor.

The Witness: Prior to it.

Exhibit "B", Annexed to Petition for a Writ of Habeas Corpus.

Q. I beg your pardon. What time was the arrest, Sergeant? A. At two-twenty.

Q. Let's get back. Did you say two-fifteen? A. Yes, sir.

Q. You were in a radio car; is that correct? (6) A. Yes.

Q. And did you receive—don't tell me what it was—Did you receive certain information; did you get a call regarding the accused? A. Yes, sir.

Q. All right. This was at two-fifteen; is that correct? A. Yes, sir.

Q. As a result of that call, as a result of that police signal, what, if anything, did you do? A. I went to the car of the accused.

Q. How long did it take you to get to the car of the accused from the time you received the signal regarding this accused? A. Between three and five minutes.

Q. Was there any break in the continuity? A. No, sir.

Q. As a result of that signal received some three to five minutes before, you then immediately went to his vehicle; is that correct? A. That's correct, sir.

Q. And also, as a result, is it fair to say, as a result of that signal you knew what you were looking for; is that fair?

Mr. Galluzzo: I object.

A. Yes, sir.

Mr. Evans: I claim it, if your Honor please.

The Court: I will allow it.

Q. What were you looking for? A. A gun, sir.

Q. And did you find that gun? A. Immediately, sir.

Q. This was about—You tell me how long it was since you received the signal? A. Approximately three to five minutes.

Exhibit "B", Annexed to Petition for a Writ of Habeas Corpus.

(7) Q. And the act that you committed on the person of the accused, namely the taking of the weapon, was that in any way connected with the signal received at two-fifteen? A. Yes, sir. The entire source.

Q. How long have you been on the Bridgeport Police Force? A. This is my twentieth year.

Q. Would you describe this arrest as acting on speedy information? A. By all means, sir.

Q. Now, having found that weapon, would you tell me what it was? A. A thirty-two fully loaded army revolver.

Q. Where was it? A. In the waistband of the accused.

Q. And then, thereafter, what happened thereafter? A. I made a further search. I placed the accused under arrest and made a further search of his person.

Q. Tell the Court what else you found in the way of contraband or instruments of crime? A. I found a small jar containing narcotics in the right pocket of his leather jacket. Immediately under the accused I found a machete. A further search of the accused yielded twenty-seven packets of a white powdered substance which a field test established as heroin.

Mr. Galluzzo: I object.

Mr. Evans: I won't claim the latter portion.

Mr. Galluzzo: May it be stricken, if your Honor please?

The Court: It may be stricken.

Q. I ask you to examine this paper, Sergeant. Are you familiar with it? A. Yes, sir.

(8) Q. Would you tell me what it is? A. It's a report from the State Division Laboratory.

Q. With respect to the given accused? A. Yes. Substances that were forwarded to the State Laboratory.

Exhibit "B", Annexed to Petition for a Writ of Habeas Corpus.

Mr. Evans: I offer it, if your Honor please.

Mr. Galluzzo: If your Honor please, for the purpose only of this proceeding, I won't have any objection to the production of the evidence.

The Court; Mark it State's Exhibit A.

(Whereupon the above referred document was marked State's Exhibit A.)

Q. Incidentally, at any time prior to the arrest, you tell the Court, did you or did you not advise him of his rights, the so-called Miranda—

Mr. Galluzzo: I object.

A. Upon finding the revolver—

Mr. Evans: I would claim that, if your Honor please.

Mr. Galluzzo: I object, if your Honor please. The direct testimony was limited to this officer's—

Mr. Evans: Very well, I won't press it.

Q. Did you find anything else on his person? A. Assorted items; train ticket to New York.

Q. Incidentally, did you have a conversation with him? A. Yes, sir.

Mr. Galluzzo: I object to any conversation the police officer had.

(9) The Court: This is a hearing in probable cause. I have enough to bind him over.

Mr. Galluzzo: If your Honor please, I would like to make my argument for the record. The testimony of the police officer is, he claims, that he made a search of this individual and after this search, he placed this man under

arrest. My claim is this, that if the State claims speedy information in the arrest and apprehension of this accused —first of all, there was no personal observation by the police officer that any crime or criminal act had been—

The Court: It doesn't have to be.

Mr. Galluzzo: —committed by the accused.

The Court: There doesn't have to be.

Mr. Galluzzo: Second of all, any information he received was strictly hearsay and that if it gave anything at all, it didn't give him probable cause to make the arrest.

The Court: That is not the law.

Mr. Galluzzo: He made an arrest after a search. The search is made incidental to the arrest and the man is arrested and articles are found on him. In this case, the search was made, and then this man was placed under arrest.

I claim the search is illegal in accordance with my motion to suppress, an unreasonable search and seizure prior to the arrest with no probable (10) cause, no scintilla of evidence whatsoever. It was not incidental to a lawful arrest because no arrest occurred until after the articles were seized. There are many cases in our—

The Court: Which charge are you talking about; the gun or heroin?

Mr. Galluzzo: I'm talking about all, if your Honor please. My statements are directed to the direct testimony of this police officer in which he says he searched this man and after a search of this man, the arrest was then made. Any articles claimed to be confiscated by this search, before an arrest was made by this man, I feel is unlawful, and that all these articles should be suppressed because of that factor. A police officer cannot use mere speculation as the basis of an arrest even if it is claimed to be on speedy information.

Exhibit "B", Annexed to Petition for a Writ of Habeas Corpus.

The law, as I understand it, on speedy information relates to the fact that once speedy information is had, probable cause existed for an arrest at which time, after the arrest is made, any articles, confiscated at that time would be under color of lawful arrest. But, here we have a search that was made prior to a lawful arrest. Any articles found incidental to that search cannot be introduced in evidence against this man and must be suppressed.

In this case the police officer himself stated (11) both by my examination and in the examination of Mr. Evans, that the arrest was after the search and after the gun was found. There was no personal observation by the police officer. There was no probable cause by the police officer. If anything, the State only had a hearsay statement by somebody which this Court does not know anything about. That is my argument. Not only should the gun be suppressed, but everything that followed was on an illegal arrest due to the fact that he was arrested only after the seizure, not under the color of the authority of an arrest, whether with or without warrant.

Mr. Evans: May I be heard, your Honor?

The Court: Very well.

Mr. Evans: I think my brother has confused the chronology. As I remember the testimony of this officer—he still has not completely been examined and may be examined or re-examined by Mr. Galluzzo in the discretion of the Court—the sequence, as I recall it, speedy information at two-fifteen. Five minutes later he picks up the weapon; picks up the weapon based on speedy information; having had probable cause, he picks up the weapon. No search at that point. After he gets the weapon, consequently the arrest; after the arrest comes the search. That is perfect in accord with the recent cases.

The Court: Anything further?

Exhibit "B", Annexed to Petition for a Writ of Habeas Corpus.

(12) Mr. Galluzzo: If your Honor please, my recollection—if the Court would permit me—to get back to my direct examination, the first few questions, said that this man searched this accused. The police officer searched this accused and after finding certain items, did then place him under arrest.

The Court: Motion is denied.

Mr. Galluzzo: May I take an exception?

The Court: Noted.

Mr. Galluzzo: If your Honor please, in view of the circumstances which came out in our motion to suppress, we are willing to waive our hearing in probable cause and enter a plea of not guilty on all the charges involved.

The Court: Probable cause is found. The defendant is bound over to the next criminal session of the Superior Court for Fairfield County under a bond of $10,000.00.

Exhibit "A-1", Annexed to Petition for a Writ of Habeas Corpus.

SUPERIOR COURT

HARTFORD COUNTY

March 20, 1969

No. 158918

ROBERT WILLIAMS

vs.

FREDERICK G. REINCKE, WARDEN, CONNECTICUT STATE PRISON

AMENDED PETITION FOR HABEAS CORPUS

The Petitioner, acting herein by Special Public Defender, alleges as follows:

1. The Petitioner is presently incarcerated in the State Prison at Somers, Connecticut.

2. The cause of his imprisonment arose as follows:

(a) On October 30, 1966 the Petitioner was searched and then arrested without a warrant. Thereafter he was searched for a second time. The State claimed to have seized a gun during the first search and a certain quantity of heroin and certain narcotics paraphernalia during the second search.

(b) On October 31, 1966 the Petitioner was presented before the Second Circuit Court on an Information charging violations of 29-38, 53-206, and 19-246.

(c) On December 8, 1966, a Motion to Suppress was filed (Exhibit A) and a plea of not guilty was entered to all counts.

(d) On December 22, 1966 a hearing was held on said Motion together with a hearing in probable cause at which hearing the Motion was denied and the Court made a finding of probable cause based on the evidence presented on said Motion. (a transcript being affixed as Exhibit B).

(e) On April 4, 1967 the Superior Court for Fairfield County heard and denied a second Motion to Suppress.

(f) On April 28, 1967, after a verdict and finding of guilty on a three count information charging violations of 19-246, 29-35 and 29-38, the Petitioner was sentenced to the State Prison at Somers for not more than six (6) years as a maximum term and not less than three (3) years as a minimum term on the First Count, one (1) year on the Second Count and one (1) year on the Third Count by the Superior Court in and for Fairfield County, Judge Radin presiding.

(g) The Supreme Court of Connecticut affirmed the Petitioner's conviction, *State* v. *Williams,* 157 Conn. (Connecticut Law Journal, 11/12/68).

(h) During the period from October 30, 1966 when the Petitioner was arrested until April 28, 1967 when he commenced his present sentence, he was incarcerated in the Correction Center in Bridgeport in lieu of bond.

3. Prior to this Petition, the Petitioner has not filed any other habeas corpus petitions.

4. The Petitioner now claims that his detention is illegal for the following reasons:

(a) The Superior Court lacked jurisdiction over the person of the Petitioner for the reasons that:

(1) His arrest was without warrant and was not based upon probable cause.

Exhibit "A-1", Annexed to Petition for a Writ of Habeas Corpus.

(2) The finding of probable cause in the Circuit Court was based on evidence which was the fruit of an illegal search.

(3) Any consent to a finding of probable cause was based on the Court's erroneous denial of the Petitioner's Motion to Suppress.

(b) The Petitioner's conviction was based on evidence which was obtained as the result of two illegal searches.

(c) The Petitioner was denied the effective assistance of counsel for the reasons that:

(1) Petitioner was not afforded the time or means to consult with his court-appointed counsel in the Circuit Court.

(2) Petitioner was not advised of his right to petition for a speedy trial.

(3) Petitioner was ill and was denied adequate medical attention while confined and therefore was unable to adequately participate in his own defense.

(4) Counsel failed to assert his claim of denial of adequate representation on appeal.

(d) Petitioner was denied a speedy trial for the reason that.

(1) The Petitioner was incarcerated for six (6) months before being brought to trial.

(2) The Petitioner was not advised as to his right to move for a speedy trial and therefore did not waive his right to same.

(3) A portion of the delay in bringing the Petitioner to trial was caused by the State's effort to find evidence to establish its case on the First Count.

Exhibit "A-1", Annexed to Petition for a Writ of Habeas Corpus.

(e) Petitioner's conviction was illegal because the State based its claim of a valid arrest and search upon knowingly inconsistent evidence in that the evidence of Officer Connolly at the Circuit Court hearing on the Motion to Suppress was different from that subsequently given by the same witness in the Superior Court.

(f) The mittimus to the State Prison and the detention pursuant to it is unlawful because said mittimus does not evidence October 30, 1966 as the date when the Petitioner's confinement commenced, which is improper because:

(1) The Connecticut General Statutes require that Petitioner be credited for preconviction time served.

(2) The failure to credit the defendant for time served in lieu of bond results in a discrimination based solely upon wealth.

(g) The conviction on the Second and Third Counts violates the Petitioner's right to bear arms.

(h) The conviction on the Second and Third Counts violates Petitioner's privilege against double jeopardy since they both punish for a single act; to wit, the possession of a gun.

(i) The Petitioner's conviction is illegal since the Petitioner's right of confrontation and due process rights were violated by reason of the Court's failure to permit inquiry as to the identity of the police informant upon whose information the probable cause was claimed.

(j) The conviction on the Third Count is illegal for the reason that the statute contains a presumption which violates the Petitioner's self-incrimination and due process rights.

(k) The conviction for violation of 19-246 was violative of Petitioner's due process rights, since it punishes a per-

son for possession of narcotics when that person is addicted to narcotics and requires such substances to sustain that addiction.

(f) The convictions on all three charges are invalid and violative of due process and inconsistent with the statutes for the reason that the Petitioner at the time of the crimes charged was addicted to opium-derivative drugs and therefore lacked sufficient comprehension and understanding to understand the consequences of his actions and to meaningfully discern and evaluate the illegality of his acts.

5. The conviction resulting from said trial and preliminary proceedings is violative of the Second, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and of Sections Seven, Eight, Nine, Fifteen and Twenty of Article First of the Connecticut Constitution.

WHEREFORE, the Petitioner prays that a Writ of Habeas Corpus be issued to bring him before said Court that justice may be done.

Dated at Hartford, Connecticut this 20th day of March 1969.

ROBERT WILLIAMS, PETITIONER

By .....
Edward F. Hennessey, III
His Attorney
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut 06103

Service certified in accordance with Practice Book Section 80(1).

Exhibit "B-1", Annexed to Petition for a Writ of Habeas Corpus.

SUPERIOR COURT

HARTFORD COUNTY.

July 23, 1969

No. 158918

ROBERT WILLIAMS

vs.

FREDERICK G. REINCKE, Warden, Connecticut State Prison

RETURN TO WRIT OF HABEAS CORPUS

And now comes Frederick Reincke, Warden of the Connecticut State Prison, respondent in the above-entitled cause of action and makes return that:

1. Paragraphs 1, 2(e), 2(f), and 2(g) are admitted.

2. As to paragraphs 2(b), 2(c), 2(d) and 2(h) the respondent has insufficient information to form a belief and leaves the petitioner to his proof.

3. All of the remaining allegations of the petition for habeas corpus are denied.

4. The petitioner Robert Williams is now in the custody of the respondent by reason of a State Prison mittimus based upon a judgment of the Superior Court within and for the County of Fairfield, rendered on the 28th day of April, 1967, a certified copy of which judgment is attached hereto and made a part hereof.

Exhibit "B-1", Annexed to Petition for a Writ of Habeas Corpus.

5. The respondent affirmatively pleads that those portions of this petition relating to alleged illegal search and seizure and speedy trial have previously been considered and determined by the Supreme Court of the State of Connecticut in the case of State vs. Robert Williams, 157 Conn. 114, and that such determination is res judicata and finally determinative on this court.

Respectfully submitted,

FREDERICK REINCKE, Warden
Connecticut State Prison

By Donald A. Browne
DONALD A. BROWNE,
His Attorney

This is to certify that a copy of the foregoing has been mailed to Edward F. Hennessey, III, Esq. counsel for the petitioner.

Donald A. Browne
DONALD A. BROWNE

Exhibit "C-1", Annexed to Petition for a Writ for a Writ of Habeas Corpus

SUPERIOR COURT

HARTFORD COUNTY

August 7, 1969

No. 158918

ROBERT WILLIAMS,

vs.

FREDERICK G. REINCKE, WARDEN,
CONNECTICUT STATE PRISON

SECOND AMENDED PETITION FOR HABEAS CORPUS

The Petitioner, acting herein by Special Public Defender, alleges as follows:

1. The Petitioner is presently incarcerated in the State Prison at Somers, Connecticut.

2. The cause of his imprisonment arose as follows:

(a) On October 30, 1966 the Petitioner was searched and then arrested without a warrant. Thereafter he was searched for a second time. The State claimed to have seized a gun during the first search and a certain quantity of heroin and certain narcotics paraphernalia during the second search.

(b) On October 31, 1966 the Petitioner was presented before the Second Circuit Court on an Information charging violations of 29-38, 53-206, 19-246.

Exhibit "C-1", Annexed to Petition for a Writ of Habeas Corpus.

(c) On December 8, 1966, a Motion to Suppress was filed (Exhibit A) and a plea of not guilty was entered to all counts.

(d) On December 22, 1966 a hearing was held on said Motion together with a hearing in probable cause at which hearing the Motion was denied and the Court made a finding of probable cause based on the evidence presented on said Motion (a transcript being affixed as Exhibit B).

(e) On April 4, 1967 the Superior Court for Fairfield County heard and denied a second Motion to Suppress.

(f) On April 28, 1967, after a verdict and finding of guilty on a three count Information charging violations of 19-246, 29-35 and 29-38, the Petitioner was sentenced to the State Prison at Somers for not more than six (6) years as a maximum term and not less than three (3) years as a minimum term on the First Count, one (1) year on the Second Count and one (1) years on the Third Count by the Superior Court in and for Fairfield County, Judge Radin presiding.

(g) The Supreme Court of Connecticut affirmed the Petitioner's conviction, *State* v. *Williams,* 157 Conn. (Connecticut Law Journal, 11/12/68).

(h) During the period from October 30, 1966 when the Petitioner was arrested until April 28, 1967 when he commenced his present sentence, he was incarcerated in the Correction Center in Bridgeport in lieu of bond.

3. Prior to this Petition, the Petitioner has not filed any other habeas corpus petitions.

4. The Petitioner now claims that his detention is illegal for the following reasons:

Exhibit "C-1", Annexed to Petition for a Writ of Habeas Corpus.

(a) Petitioner's conviction was illegal because the State based its claim of a valid arrest and search upon knowingly inconsistent evidence in that the evidence of Officer Connolly at the Circuit Court hearing on the Motion to Suppress was different from that subsequently given by the same witness in the Superior Court.

(b) The mittimus of the State Prison and the detention pursuant to it is unlawful because said mittimus does not evidence October 30, 1966 as the date when the Petitioner's confinement commenced, which is improper because:

(1) The Connecticut General Statutes require that Petitioner be credited for pre-conviction time served.

(2) The failure to credit the defendant for time served in lieu of bond results in a discrimination based solely upon wealth.

(c) The conviction on the Second and Third Counts violates the Petitioner's right to bear arms.

(d) The conviction on the Second and Third Counts violates Petitioner's privilege against double jeopardy since they both punish for a single act; to wit, the possession of a gun.

(e) The Petitioner's conviction is illegal since the Petitioner's right of confrontation and due process rights were violated by reason of the Court's failure to permit inquiry as to the identity of the police informant upon whose information the probable cause was claimed.

(f) The conviction on the Third Count is illegal for the reason that the statute contains a presumption which violates the Petitioner's self-incrimination and due process rights.

Exhibit "C-1", Annexed to Petition for a Writ of Habeas Corpus.

(g) The conviction for violation of 19-246 was violative of Petitioner's due process rights, since it punishes a person for possession of narcotics when that person is addicted to narcotics and requires such substances to sustain that addiction.

(h) The convictions on all three charges are invalid and violative of due process and inconsistent with the statutes for the reason that the Petitioner at the time of the crimes charged was addicted to opium-derivative drugs and therefore lacked sufficient comprehension and understanding to understand the consequences of his actions and to meaningfully discern and evaluate the illegality of his acts.

5. The conviction resulting from said trial and preliminary proceedings is violative of the Second, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and of Sections Seven, Eight, Nine, Fifteen and Twenty of Article First of the Connecticut Constitution.

WHEREFORE, the Petitioner prays that a Writ of Habeas Corpus be issued to bring him before said Court that justice may be done.

Dated at Hartford, Connecticut this 7th day of August 1969.

ROBERT WILLIAMS, PETITIONER

By

Edward F. Hennessey, III
His Attorney
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut 06103

Service certified in accordance with Practice Book, Section 80(1)

Return to Writ of Habeas Corpus.

And now comes Frederick E. Adams, Warden of the Connecticut State Prison, respondent in the above-entitled cause of action and makes return that:

1. Paragraphs 1, 2(e), 2 (f) and 2 (g) are admitted.

2. As to Paragraphs 2 (b), 2 (c), 2 (d), 2 (h) and 3, the respondent has insufficient information to form a belief and leaves the petitioner to his proof.

3. All of the remaining allegations of the petition for habeas corpus are denied.

4. The petitioner Robert Williams is now in the custody of the respondent by reason of a State Prison mittimus based upon a judgment of the Superior Court within and for the County of Fairfield, rendered on the 28th day of April, 1967, a certified copy of which judgment is attached hereto and made a part hereof.

5. The petitioner's claims relating to speedy trial and illegal search have been considered by the state courts of the State of Connecticut and the petitioner appears to have exhausted state court jurisdiction on those matters. (See *State* v. *Williams,* 157 Conn. 114, 249 A.2d 245; cert. denied —— U.S. ——; 37 U.S. Law Week 3451).

6. The respondent affirmatively pleads that the petitioner's claims in the nature of inadequate representation by counsel; inability to participate in his defense by reason of illness; inability to consult with counsel in the Circuit Court; nonadvisement of the right to a speedy trial; deprivation of medical attention; and failure of counsel to pursue a claim of inadequate representation on appeal (i.e., those matters set forth in Paragraph 4(c) (1), (2), (3) and (4) have never been ruled upon by the Courts of

the State of Connecticut and said matter should be submitted for determination by such state courts.

7. The respondent attaches hereto as a part of this return, a copy of the State Court Findings of Fact on appeal.

8. The respondent avers that there have been no prior habeas corpus proceedings and consequently no transcript is included herewith.

Respectfully submitted,

FREDERICK E. ADAMS, Warden
Connecticut State Prison,
Respondent

By Donald A. Browne
Donald A. Browne
His Attorney

This is to certify that a copy of the foregoing has this date been mailed to Robert Williams, Box 100, Somers, Connecticut

.....
Donald A. Browne
Donald A. Browne

Dated at Bridgeport, Connecticut this 6th day of October, 1969

Information and Judgment, Annexed to Return.

SUPERIOR COURT,

FAIRFIELD COUNTY,

CRIMINAL TERM.

January Session, 1967

STATE OF CONNECTICUT

vs.

ROBERT WILLIAMS

OTTO J. SAUR, State's Attorney for Fairfield County accuses ROBERT WILLIAMS then of Bridgeport of the crime of VIOLATION OF UNIFORM STATE NARCOTIC DRUG ACT and charges that on the 30th day of October 1966 at Bridgeport in said County the said Robert Williams did have under his control certain narcotic drugs, to wit: Heroin and Morphine, in violation of Section 19-246 of the Connecticut General Statutes.

AND SAID STATE'S ATTORNEY FURTHER ACCUSES the said Robert Williams of the crime of CARRYING PISTOL ON PERSON WITHOUT PERMIT and charges that on the 30th day of October 1966 at Bridgeport in said County the said Robert Williams did carry on his person a certain pistol without a legal permit therefor, and not being within his dwelling house or place of business, in violation of Section 29-35 of the Connecticut General Statutes.

AND SAID STATE'S ATTORNEY FURTHER ACCUSES the said Robert Williams of the crime of WEAPONS IN VEHICLES and

charges that on the 30th day of October 1966 at Bridgeport in said County the said Robert Williams did knowingly have in a motor vehicle, owned, operated and occupied by him a certain revolver without a legal permit therefor and a certain knife, the edge portion of the blade of which is in excess of four inches, without a legal permit therefor, in violation of Section 29-38 of the Connecticut General Statutes.

Dated at Bridgeport, Conn., this 3rd day of January 1967.

OTTO J. SAUR
State's Attorney
in and for Fairfield County.

STATE OF CONNECTICUT

SUPERIOR COURT

FAIRFIELD COUNTY

April 28 1967

No. 16,746

STATE

vs.

ROBERT WILLIAMS

PRESENT, HON. MICHAEL RADIN, JUDGE

JUDGMENT

Upon the information of OTTO J. SAUR, Attorney for the State, within and for the County of Fairfield, charging

said ROBERT WILLIAMS, now in the custody of the Sheriff of said County, with the crimes of Violation of Uniform State Narcotic Drug Act,—Section 19-246, Carrying Pistol on Person Without Permit,—Section 29-35, and Weapons in Vehicles, Section 29-38 as per information on file.

The prisoner appeared with his Attorney, G. Sarsfield Ford, and subsequently the Court appointed Bernard Green, Esquire, Special Public Defender to represent the defendant. The prisoner then for plea said "Not Guilty" and elected to be tried by a jury of twelve. He subsequently changed his election and after a full hearing, the Court found the prisoner Guilty on each count.

It is therefore found by the Court that the prisoner is Guilty of Violation of Uniform State Narcotic Drug Act, Section 19-246, Carrying Pistol on Person Without Permit, Section 29-35, and Weapons in Vehicles, Section 29-38 in the manner and form as charged in said information.

The Court thereupon sentenced the said prisoner to be confined for a period not exceeding six years as a maximum term and not less than three years as a minimum term on the first count; one year on the second count and one year on the third count in the Connecticut State Prison at Somers, and to stand committed until said judgment is complied with.

By the Court,

BERNARD J. LUCKART
Assistant Clerk

Information and Judgment, Annexed to Return.

STATE OF CONNECTICUT

FAIRFIELD COUNTY ss.: SUPERIOR COURT

No. 16,746

STATE

vs.

ROBERT WILLIAMS

I, J. LEO CAMPANA, Clerk of the Superior Court for Fairfield County at Bridgeport, hereby certify that the within and foregoing is a true copy of the original Information and Judgment in said cause, as on file and of record appears.

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said Court at Bridgeport, in said County, this 6th day of October, 1969.

J. LEO CAMPANA, Clerk

by SAMUEL R. SALLICK
Samuel R. Sallick
Deputy Clerk.

State Court Findings of Fact on Appeal.

SUPERIOR COURT

FAIRFIELD COUNTY

September 11, 1967

No. 16746

STATE OF CONNECTICUT

vs.

ROBERT WILLIAMS

FINDING

FIRST: The following facts are found:

1. John Connolly is a sergeant with the Bridgeport Police Department and has been associated with that department for twenty years.

2. Sergeant Connolly was on duty alone in a patrol car on the early morning of Sunday, October 30, 1966, working a shift from midnight to 8:00 a.m.

3. On October 30, 1966, at approximately 2:15 a.m. Sergeant Connolly had a conversation with someone in a gas station situated on the southeast corner of East Main Street and Hamilton Street in Bridgeport.

4. The intersection of East Main Street and Hamilton Street is in a neighborhood with a high rate of crime of various kinds.

5. Sergeant Connolly knew the person who spoke with him, and had received accurate information from this person before and considered this person to be trustworthy and reliable.

6. The same person at that time and place advised Sergeant Connolly that there was a person seated in an automobile nearby with a pistol at his waist and with narcotics.

7. At the same time and place, the same person pointed out a particular car parked on the north side of Hamilton Street facing East Main Street as being the auto in which the person with the gun and narcotics was seated.

8. The automobile was a 1958 tan, Plymouth two-door hardtop.

9. The occupant of the automobile which was pointed out to Sergeant Connolly was the defendant Robert Williams.

10. The defendant was seated on the passenger's side of the front seat of the automobile.

11. At approximately 2:20 a.m., Sergeant Connolly walked alone from the gas station over to the car and tapped on the window and advised the defendant to open the door.

12. At the time Sergeant Connolly approached the defendant in the automobile, he was alone.

13. The defendant did not open the door but rolled down the window.

14. After the defendant rolled down the automobile window, Sergeant Connolly reached in and removed a fully loaded 32 caliber Army Special revolver from the waistband of the defendant's trousers.

15. Sergeant Connolly put his hand through the defendant's open coat and directly onto the revolver without feeling around the defendant's waistband.

16. The revolver was exactly where the person in the gas station had told Sergeant Connolly it was.

State Court Findings of Fact on Appeal.

17. After Sergeant Connolly removed the revolver, he advised the defendant that he was under arrest.

18. Prior to advising the defendant that he was under arrest, Sergeant Connolly had not made any search of the defendant's pockets or clothing.

19. Other members of the Bridgeport Police Department arrived at Hamilton Street in response to a call from Sergeant Connolly.

20. After the defendant was advised that he was under arrest, a search was made of his person and of the automobile at the scene on Hamilton Street.

21. The defendant had 21 cellophane packets containing a white substance in his wallet and an additional 6 cellophane packets of a similar white substance in rolled balloons in a jar in his right-hand coat pocket.

22. These packets were marked by members of the Bridgeport Police Department and were forwarded to the State Toxicological Laboratory in Hartford for analysis.

23. Ten of the packets were examined by Dr. Abraham Stolman of the State Toxicological Laboratory and all ten were determined to contain heroin.

24. A search of the automobile made on Hamilton Street disclosed a machete under the front seat and another different revolver in the trunk of the car.

25. Robert Williams had never obtained a permit from the Bridgeport Police Department to carry a pistol in that city.

26. At police headquarters, a police detective, James Nilan, found a set of "works" consisting of a hypodermic needle, a bulb, a cooker (or cap) and a piece of cotton residue on top of the defendant's head, under his hat.

State Court Findings of Fact on Appeal.

27. The defendant appeared in the Circuit Court Second Circuit on October 31, 1966.

28. At that time, the defendant was advised of certain constitutional rights by a judge of the Circuit Court.

29. On October 31, 1966, the defendant's case in the Circuit Court was continued until November 3, 1966.

30. On November 3, 1966, a public defender was assigned to represent the defendant in the Circuit Court and the case was continued until November 8, 1966.

31. On November 8, 1966, the defendant's bond was reduced to $1000 and the case was continued to November 15, 1966.

32. The defendant's case in Circuit Court was subsequently continued nisi (without date) pending the results of the laboratory analysis of the white powder found on his person.

33. Domenick J. Galluzzo and Richard T. Meehan are practicing Connecticut attorneys and in the months of October, November and December, 1966, both served as public defenders in the Circuit Court Second Circuit which accompasses the Bridgeport area.

34. Attorneys Galluzzo and Meehan filed a written appearance in the Circuit Court in behalf of the defendant Robert Williams, on November 3, 1966.

35. During the time that the defendant's case was within the jurisdiction of the Circuit Court, Attorney Galluzzo had several conversations with him.

36. During the time that the defendant's case was within the jurisdiction of the Circuit Court, Attorney Galluzzo and Attorney Meehan had several conversations with one John Evans, Chief Prosecutor of the Second Circuit Court, concerning the defendant's case.

State Court Findings of Fact on Appeal.

37. On December 8, 1966, the defendant appeared in Circuit Court and pleaded Not Guilty to the three charges against him.

38. On December 8, 1966, Attorney Galluzzo and Attorney Meehan filed a Motion for Production and Disclosure in the Circuit Court in behalf of the defendant Robert Williams.

39. On December 8, 1966, Attorney Galluzzo and Attorney Meehan filed a Motion to Suppress Evidence in the Circuit Court in behalf of the defendant Robert Williams.

40. The defendant's case in the Circuit Court was continued from November 8, 1966, until December 8, 1966, because the State Laboratory needed time to complete an analysis of certain items which had been found on the defendant's person.

41. It takes from six to eight weeks to obtain such an analysis from the State Toxicologial Laboratory.

42. The items referred to the State Toxicological Laboratory were returned to the Bridgeport Police sometime after November 30, 1966.

43. On December 22, 1966, in the Second Circuit Court, a hearing was held on the Motion to Suppress Evidence which Attorneys Galluzzo and Meehan had filed in behalf of the defendant.

44. At the hearing on the Motion to Suppress, Attorney Galluzzo questioned Sergeant Connolly relative to the events of the defendant's arrest on October 30, 1966.

45. On December 22, 1966, the defendant's case was bound over to the January 1967 Term of the Superior Court for Fairfield County.

State Court Findings of Fact on Appeal.

46. The defendant never filed any motion in the Circuit Court requesting an immediate hearing or a speedy trial.

47. On January 1, 1967, there were 134 criminal cases pending in the criminal side of the Superior Court for Fairfield County.

48. Approximately 60 additional cases were bound over to the January 1967 Term of the criminal side of the Superior Court for Fairfield County.

49. During the months of January, February and March, 1967, at least one court was continuously operating as a criminal court in the Superior Court for Fairfield County.

50. From February 21, 1967 to March 21 or 22, 1967, there were two courts continuously operating exclusively with criminal cases in the Superior Court for Fairfield County.

51. During the months of February, March and April, 1967, there were 28 trials of Criminal cases in the Superior Court for Fairfield County and the total of 128 Criminal cases were disposed of.

52. On the date of the defendant's arraignment in the Superior Court for Fairfield County, he conferred with a Mr. Ford, Assistant Public Defender for Fairfield County.

53. On February 2, 1967, Bernard Green was appointed Special Public Defender for the defendant in the Superior Court for Fairfield County.

54. On March 20, 1967, in the Superior Court for Fairfield County, the defendant's attorney made an oral motion for a speedy trial.

State Court Findings of Fact on Appeal.

55. Following that motion, the defendant's case was assigned to the first following trial date on April 4, 1967, which was three court days following his oral motion.

56. The defendant never filed any written motion in the Superior Court for Fairfield County requesting an immediate hearing or a speedy trial.

SECOND: The following conclusions have been reached:

57. The defendant was not subjected to an unreasonable search or seizure under the provisions of the Constitution of the United States and the Constitution of the State of Connecticut.

58. The defendant was not denied a speedy trial under the provisions of the Constitution of the United States and the Constitution of the State of Connecticut.

59. The defendant was not subjected to cruel and unusual punishment under the provisions of the Constitution of the United States and the Constitution of the State of Connecticut.

60. The defendant was not denied assistance of counsel under the provisions of the Constitution of the United States and the Constitution of the State of Connecticut.

61. The defendant was Guilty as charged in all counts of the Information.

THIRD: The defendant made the following claims of law respecting the judgment to be rendered:

62. The initial seizure of the pistol was the result of an illegal search and seizure and, therefore, could not form the basis for a legal arrest.

63. The arrest made of the defendant was the result of an illegal search and seizure and, therefore, was an illegal arrest.

State Court Findings of Fact on Appeal.

64. All weapons and items of narcotics produced in evidence at the trial were found as the result of a search and seizure made incident to an illegal arrest and, therefore, should have been suppressed.

65. Five and one-half months was an unreasonably long period of time to hold the accused without bringing him to trial and that, therefore, he was denied a right of speedy trial and should have been discharged.

66. The accused was effectively denied access to and assistance of counsel in the preparation of his defense for a period of some three months, in violation of the Constitutions of the United States of America and the State of Connecticut.

67. The accused was subjected to cruel and unusual punishment as a result of his physical condition and the conditions of his confinement, all in violation of the Constitutions of the United States of America and the State of Connecticut.

Notwithstanding said claims, the court ruled as on file.

FOURTH: The court made the following rulings on the trial:

68. The police officer testified at the hearing on the motion to suppress that he had received information from an informant that the accused had narcoties and weapons on his person. On cross-examination, the following occurred:

"Q. Now, who was the informant who spoke to you in the parking lot of the gas station?

Mr. Browne: Object to that, your Honor.

The Court: Objection sustained.

Mr. Green: I claim it, your Honor. May I know the basis of the objection, your Honor?

Mr. Browne: I think that is in the nature of a privileged communication. I rely on the very recent decision of *McCray* versus somebody in the United States Supreme Court, which holds that in the nature of a privileged communication. There is no obligation on the police officer to disclose who the informant is.

Mr. Green: I don't think there is any Connecticut decision that holds that, your Honor. The *McCray* case which came down very recently merely holds that the obligation to disclose is not constitutional in its nature. And I claim that under 6-49, the arrest statute—and I presume it is claimed here that the search was incidental to an arrest—that the officer has to have reasonable grounds that a felony was being committed.

Now, in determining whether or not he has reasonable grounds and whether a felony was being committed, I certainly think the person who gave him the information becomes extremely important. Outside of that, the court cannot make a determination of this issue.

The Court: Objection is overruled without comment. I don't see any need for having anything on the record. I think it is a well known fact of disclosure of this type, of this nature.

Mr. Green: I presume your Honor is ruling that the State's objection is sustained.

The Court: That's correct.

Mr. Green: May I have an exception?

The Court: You may have an exception."

69. Thereafter, the following occurred:

"Q. Do you know whether or not your informant had a criminal record? A. I believe the informant did.

Q. And was her name Jane Cooper?
Mr. Browne: Object to that, your Honor.
The Court: Objection sustained.
Mr. Green: May I have an exception?
The Court: You may have an exception."

70. The defendant offered evidence at the trial in support of his claim that he was denied a speedy trial. After the defendant had completed his testimony in support of the motion, the State produced as a witness, John Raineault, County Detective attached to the State's Attorneys Office, at Fairfield County, who testified that as part of his duties he kept a list of cases pending and disposed of in this Court. Then the following occurred.

"Q. Detective, can you tell his Honor how many cases were pending, criminal cases were pending, in the criminal side of Superior Court on January 1st of 1967?

Mr. Green: Objection.

The Court: What is the reason for that offer?

Mr. Browne: Well, your Honor, I think that this goes to the question of the speedy trial; that one of the elements which our Supreme Court says must be considered in determining whether or not any accused has been denied a speedy trial is the question of the other business before the Court and the other business which a Court has to handle. I think that that is an element which should at least be stated for the record for purposes of review if there ever is any review of this hearing. I think I am entitled to put in the record the amount of business which was being handled by the Court at this time.

I am referring your Honor, to *State* versus *Hodge*, an April, '66 case. I think that we are entitled to show for the record what the type of business was

being handled by our Court, and the fact that we were steadily engaged in the trial of cases during those months.

One of my purposes with this witness is to put into the record the number of cases which were actually tried and disposed of by the Criminal Superior Court during those months.

The Court: Objection overruled.

Mr. Green: May I have an exception?

The Court: You may have an exception."

71. The defendant made objection to the admission of evidence of the weapons and the items and the narcotics that were seized from the defendant or taken from his automobile as a result of the search and seizure claimed to be illegal. The objection to the admission of these items as full exhibits were, in each instance, overruled by the court and, in each instance, an exception was taken by the defendant from the court's ruling.

72. Detective Nilan of the Bridgeport Police Department testified that he found on the person of the accused a needle, an eyedropper, a cooker and some toilet tissue. Thereafter, the accused objected to the admission of testimony by Detective Nilan as to what these items were ordinarily used for, which objection was sustained by the court.

73. Thereafter, the State offered in evidence, as and for Exhibit "A" which offer included the medicine dropper, bottle cap, hypodermic needle and needle holder. Then, the following occurred:

"Mr. Green: May I state my objection further, your Honor?

The Court: Oh, certainly.

State Court Findings of Fact on Appeal.

Mr. Green: With respect to the medicine dropper, the bottle cap, the hypodermic needle and the needle holder, these are things that are totally immaterial to these proceedings on the basis of this claim, the State's claim.

I think the State is not claiming the man was a user, and the medicine dropper did not have any of the narcotic drugs that were specified in the information on it.

There is one item we don't have listed. Apparently the screw cap did. One of these other items did. I think the tube that was defaced, whatever that is. That quinine hypodermic needle had nothing and the needle holder had nothing.

Now, on that basis, it seems to me these exhibits are totally immaterial to these proceedings, and I object to those particular items in the envelope for that reason.

Mr. Browne: The needle and holder—

Mr. Green: I would be the last person in the world to give full reliance to my notes, but they indicate on the medicine dropper that quinine was found. The information makes no allegation with respect to quinine, it makes allegations with respect to morphine and heroin. The hypodermic needle and the needle holder were "clean." They had no drugs on them at all. And then there is a fifth item which the report indicates had nothing on it but quinine.

Mr. Browne: As I understand it, your Honor, the needle holder and the medicine dropper did not show narcotics. The 27 envelopes, the screw cap and cotton and white toilet tissue all did. Again, your Honor, I say and I feel that these items are all material. They are all items which were in fact found on this accused on this particular day. I think that they go to sub-

stantiate the fact that he in fact had narcotics under his control on that date.

The Court: Are you going on the reason that they are associated and come within the statutory provision?

Mr. Browne: I will say this, your Honor, that I think the evidence of the testimony of Detective Nilan was that these were all found at one time in one location under his hat. And the fact that the dropper, the needle and the needle holder were all found part and parcel and at the same time in the location with the toilet tissue and cap and cotton, which do contain narcotics, I think they make them all relevant. Whether or not there were narcotics found in each individual item may go to the weight of the evidence. I think we do have evidence here that at the same time and at the same location under this man's hat were found five things, two of which contained narcotics by analysis and three of which did not. I think they were all found at the same location at the same time. I think they are all admissible. And the fact that there actually was no narcotics in one or two of them goes to the weight of the evidence.

The Court: Objection overruled.

Mr. Green: May I have an exception?

The Court: You may have an exception.

Mr. Green: I believe I also stated the objection for the record on the ground that they are illegal.

The Court: That's correct, you have two grounds."

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. 13,428

ROBERT WILLIAMS,

Petitioner,

v.

FREDERICK E. ADAMS, Warden, Connecticut State Prison,

Respondent.

RULING ON PETITION FOR A WRIT OF HABEAS CORPUS

The petitioner, a state prisoner, has brought this application for a writ of habeas corpus claiming that the evidence used against him in his state court trial and conviction was the product of an illegal search and seizure and that he was denied the right to a speedy trial. He represents that timely motions to suppress the evidence were made, both at the preliminary hearing in the state circuit court and in the superior court, and that all state remedies on the issues raised have been exhausted. *State* v. *Williams,* 157 Conn. 114 (1968); and the Court so finds. Because of a conflict in the evidential record educed at the two aforesaid state court hearings, relating to the arresting officer's justification for making the challenged search and seizures, it was necessary that this hearing be held to ascertain the true facts. *Townsend* v. *Sain,* 372 U. S. 293, 313 (1963). Therefore, the Court appointed counsel and approved the petitioner's application to proceed in forma pauperis.

Petitioner was convicted of violating Connecticut General Statutes § 19-246, possession of narcotics, § 29-35, carrying a pistol on his person without a warrant and §-29-38, having a weapon in a vehicle. On the night of his arrest, he was seated alone in an automobile in a high crime area of Bridgeport, Connecticut at 2:15 on a Sunday morning. The arresting officer, acting on speedy information furnished by a reliable informant, that Williams had a gun in his belt and narcotics on his person, went to the car to investigate. The policeman asked him to open the door and Williams responded by rolling down the window. The officer immediately reached inside the car and removed a fully loaded pistol from Williams' waistband. He then placed Williams under arrest and conducted a further search of his person and of the automobile. This search produced several packets of a substance which later proved to be heroin taken from his person, a machete was found under the front seat of the car and a second pistol in the trunk. The conviction § 29-38, Conn. Gen. Stat., involved only his possession of the machete.

The conflict in the evidential record, which required this Court to grant a hearing, revolved around the source of the information upon which the police officer had relied in making his seizure of the first pistol. The record of the proceedings on the first motion to suppress in the state circuit court indicates that the officer was responding to some kind of a "signal" or "call" of unspecified origin. In the state superior court the testimony of the officer was that the information was transmitted to him by a person whom he met within view of the petitioner's automobile and who was known to him and considered by him to be trustworthy and reliable. This conclusion of trustworthiness was based, in part, on the fact that on at least one prior occasion this informant had supplied reliable information regarding criminal activities. Although this pre-

vious information did not lead to an arrest the officer was convinced that it was correct and that the only reason no arrest resulted was that the suspects saw the officer and ceased their criminal conduct.

At this Court's hearing the facts as they appear in the superior court record were substantiated and using them as the findings of this Court, petitioner's motion for habeas corpus is denied.

The ruling on this motion, as to the search and seizure issue, turns on the propriety of the officer's actions in reaching into the car and removing the pistol from the petitioner. The test to be applied is as follows:

> "(T)he conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures . . . .
>
> "In order to assess the reasonableness of (the officer's) conduct as a general proposition, it is necessary 'first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen,' for there is 'no ready test for determining reasonableness other than by balancing the need to search (or seize) against the invasion which the search (or seizure) entails.' *Camara* v. *Municipal Court*, 387 U. S. 523, 534-535, 536-537 (1967). And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry* v. *Ohio*, 392 U. S. 1, 20-21 (1968).

The governmental interest at work in *Terry*, and in the case at bar, is the interest of the policeman in protecting himself and others in situations where probable cause for arrest is lacking. (It appears clear on these facts that

Adams v. Williams No. 70-283

under § 6-49, Conn. Gen. Stat., as construed in *State* v. *Carroll,* 131 Conn. 224, providing for arrest on "speedy information" that where a crime has been or is being committed, that Williams might have been properly arrested and all searches been properly conducted incident thereto. *State* v. *Williams,* 157 Conn. 114, 118 (1968). The state, however, has not chosen to rely on this statute but rather on the "protective search" theory of *Terry* v. *Ohio, supra*).

In weighing the above need, the justification for the invasion must be considered. A mere "hunch" on the officer's part, even if in good faith, is insufficient. *Beck* v. *Ohio,* 379 U. S. 89, 96-97 (1964). Rather, the officer must be justified in believing that the person upon whom the intrusion is imposed is armed and presently dangerous to the officer or others. *Terry* v. *Ohio, supra* at 24. If such is the case "it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." *Id.*

In the present case such justification existed, Petitioner was alone in an automobile in the early morning hours in a high crime area. While this in itself might be sufficient to raise an alert officer's suspicions, it probably, would be insufficient to justify a search. Here, however, the officer was primarily relying on information given him by a reliable informant, who had pointed out the location of the car and its occupant within visible distance of its location. This combination of circumstances was sufficient to empower the officer to constitutionally "take necessary measures to determine" if the party to observed was armed and therefore potentially dangerous.

Once some sort of action is found to be constitutionally permissible it must next be determined ". . . the nature and quality of the intrusion on individual rights which must be accepted if police officers are to be conceded the right to search for weapons in situations where probable

cause to arrest for crime is lacking." *Terry* v. *Ohio, supra,* at 24. Thus the question is what type of search would be reasonable in the circumstances as herein presented.

> "The sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer." *Terry* v. *Ohio, supra* at 29.

In *Terry* the search, which the Supreme Court upheld and which it characterized as one in which the officer "confined his search strictly to what was minimally necessary to learn whether the men were armed and to disarm them once he discovered the weapons," *Terry* v. *Ohio, supra* at 30, consisted of the patting down of the outer garments of the suspects and only reaching inside said garments to remove suspicious objects. In *Sibron* v. *New York,* 392 U. S. 40 (1968), a case decided the same day as was *Terry,* the Court attempted to distinguish a search where probable cause for arrest was lacking. Petitioner cites *Sibron* and quotes therefrom the following passage as supporting his position.

> "The search for weapons approved in *Terry* consisted solely of a limited patting of the outer clothing of the suspect for concealed objects which might be used as instruments of assault. Only when he discovered such objects did the officer in *Terry* place his hands in the pockets of the men he searched. In this case, with no attempt at an initial limited exploration for arms, Patrolman Martin thrust his hand into Sibron's pocket and took from him envelopes of heroin."

Petitioner analogizes the search in *Sibron* with the officer's action here of thrusting his hand inside the automobile and

partially under his coat to remove the gun. The cause, however, are clearly distinguishable, as is apparent from the language of the Court immediately following the above quoted passage which appeared in petitioner's brief.

> "His (Patrolman Martin's) testimony shows that he was looking for narcotics, and he found them. The search was not reasonably limited in scope to the accomplishment of the only goal which might conceivably have justified its inception—the protection of the officer by disarming a potentially dangerous man. Such a search violates the guarantee of the Fourth Amendment, which protects the sanctity of the person against unreasonable intrusions on the part of all governmental agents." *Sibron* v. *New York, supra* at 65-66.

Other distinguishing facts in *Sibron* are that the arresting officer there had no reasonable grounds to suspect that Sibron was involved in any criminal activity nor did he believe him to be armed.

The test remains, was the officer's action reasonable under all the circumstances. While the Supreme Court in both *Terry* and *Sibron* expressed approval of searches of this type consisting of a patting down of the suspect's outer clothing it did not limit its approval to that type of search. Indeed, such a search would have been impractical here. The officer's information was that Williams had a gun in the waistband of his pants. This could not have been verified by a pat-down search due to the fact that the suspect was seated in a car. In view of the darkness of the hour, rendering it impossible for the officer to see inside the car, it is too much to require that he stand beside it while its occupant, whom he had reason to believe had a gun in an easily accessible position, alights. This exposes the officer to the unreasonable risk that in the

process of getting out of the car the suspect may draw his gun and fire on him. Rather, the officer did the only thing reasonably calculated to protect himself by restricting his search to the immediate area of the suspect's person where he had reason to believe a weapon might be located. The fact that this required him to reach partially under the suspect's coat in extracting the gun does not make his actions any less reasonable in light of all the circumstances. As was the case in *Terry*, the officer here "confined his search strictly to what was minimally necessary to learn whether the (man was) armed and to disarm (him) once he discovered the (weapon)." *Terry* v. *Ohio, supra* at 30.

Once the officer found the gun and placed Williams under arrest, the remainder of his search was incident thereto. The only portion of this latter search which might be argued to have surpassed the boundaries set forth in *Chimel* v. *California*, 395 U. S. 752 (1969), was the search of the car's trunk, during which the second gun was found. This defect, if it was one, is cured by the fact that this second gun did not result in any further criminal charges. Thus, the petitioner was in no way subjected to an unreasonable search or seizure.

Petitioner also seeks release by alleging he was denied a speedy trial in contravention of the Sixth Amendment. A brief statement of the facts upon which this claim is grounded will be helpful. Williams was arrested on October 30, 1966. The next day he was presented in circuit court where the presiding judge appraised him of his constitutional rights. The case was then continued until November 3, 1966 at which time a public defender was appointed to represent him. The case was then continued until December 8, 1966 to await the state's toxicological examination on the white powder found on Williams at the time of his arrest. On December 8, 1966, he plead not guilty to all charges and various motions were made by his attorney. These motions were heard on December 22,

1966 and at that time the court found probable cause and Williams was bound over to the January, 1967 term of the superior court. On February 2, 1967, a special public defender was appointed and it was not until March 20, 1967, that he made an oral motion for a speedy trial. No other motion for a speedy trial was ever made. The trial began on April 4, 1967.

The Sixth Amendment, guaranteeing the right to a speedy trial was made applicable to the states by virtue of the Fourteenth Amendment, in *Klopfer* v. *North Carolina*, 386 U. S. 213 (1967). Although the Sixth Amendment has only recently been applied to the states, its scope has been developed in a series of criminal cases wherein the United States was a party.

> "This guarantee is an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself. However, in large measure because of the many procedural safeguards provided an accused, the ordinary procedures for criminal prosecution are designed to move at a deliberate pace. A requirement of unreasonable speed would have a deleterious effect both upon the rights of the accused and upon the ability of society to protect itself. Therefore, this Court has consistently been of the view that 'The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice.' *Beavers* v. *Haubert*, 198 U. S. 77, 87. 'Whether delay in completing a prosecution . . . amounts to an unconstitutional deprivation of rights depends upon the circumstances. . . . The delay must not be purposeful

> or oppressive,' *Pollard* v. *United States*, 352 U. S. 354, 361. '(T)he essential ingredient is orderly expedition and not mere speed.' *Smith* v. *United States*, 360 U. S. 1, 10." *United States* v. *Ewell*, 383 U. S. 116, 120 (1966).

There is no substance to the claim that the state acted with other than "orderly expedition" in the prosecution of this matter. Nor has the petitioner been shown to have been prejudiced in any way by the allegedly undue delay on the part of the state. Thus, no Sixth Amendment violation is present. See *United States* v. *Simmons*, 338 F. 2d 804 (2d Cir. 1964); *United States ex rel. Von Cseh* v. *Fay*, 313 F. 2d 620 (2d Cir. 1963).

The writ of habeas corpus is denied and dismissed. So ORDERED.

The Court expresses its appreciation to Edward F. Hennessey, Esquire, of Hartford, who has so ably represented the petitioner in this proceeding, without benefit of any professional fee or remuneration.

Dated at Hartford, Connecticut, this 5th day of January, 1970.

T. EMMET CLARIE
United States District Judge

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

CASE NO. 34826 — ROBERT WILLIAMS v. ADAMS, Warden

DATE	FILINGS—PROCEEDINGS
1970	
Feb. 17	Received certain District Court papers
Feb. 24	Filed motion for certificate of probable cause with proof of service
Mar. 3	Received record (original papers of District Court)
Mar. 6	Filed motion for leave to proceed in forma pauperis and for assignment of counsel with proof of service
Mar. 9	Filed order denying motion for certificate of probable cause, etc.
Mar. 9	Filed order denying motion for leave to proceed in forma pauperis and assignment of counsel
Mar. 27	Filed motion for certificate of probable cause, etc.
Mar. 27	Filed memorandum in support of motion for certificate of probable cause, etc.
Apr. 1	Filed affidavit of service
Apr. 20	Filed order granting motion for certificate of probable cause; forma pauperis and for assignment of counsel; Edward F. Hennessey, Esq. is assigned counsel for appellant—#

Docket Entries.

Date	Filings—Proceedings
Apr. 23	Filed record (original papers of District Court)
May 8	Filed motion for copy of transcript with proof of service
May 13	Filed order denying motion for transcription of the minutes at the expense of the U.S.; appellant's dispense with appendix except that a copy of opinion below
June 1	Filed 4 copies brief, appellant with proof of service
June 24	Filed brief, appellee with proof of service
July 6	Filed 4 copies reply brief, appellant with proof of service
Sept. 29	Argument heard (by: Danaher, Friendly & Hays, CJJ)
Dec. 16	Judgment Affirmed, Danaher, CJ
Dec. 16	Dissenting in separate opinion, Friendly, CJ
Dec. 16	Filed judgment
1971	
Jan. 6	Filed motion for extension of time to file petition for rehearing with proof of service
Jan. 12	Filed order granting motion for extension of time to file petition for rehearing until 1-14-71
Jan. 14	Filed petition for rehearing and rehearing in banc with proof of service
Mar. 3	Filed order granting petition for rehearing and rehearing in banc; reconsideration to be

DATE	FILINGS—PROCEEDINGS
	had on record and the briefs heretofore filed, without further oral argument; the parties may exchange and file further briefs by 3-23-71
Mar. 22	Filed 10 copies supplemental brief, appellant with proof of service
Mar. 22	Filed order granting leave to file appellee's supplemental brief with appendix today
Mar. 22	Filed supplemental brief and appendix, appellee with proof of service
Apr. 14	Petition for Rehearing in Banc—Order of District Court Reversed, Per Curiam
Apr. 14	Hays, CJ dissenting in separate opinion
June 21	Filed notice of filing of petition for writ of certiorari

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 64—September Term, 1970.

(Argued September 29, 1970 Decided December 16, 1970.)

Docket No. 34826

ROBERT WILLIAMS,

Petitioner-Appellant,

—v.—

FREDERICK E. ADAMS, Warden, Connecticut State Prison,

Respondent-Appellee.

Before:

DANAHER,* FRIENDLY and HAYS,

Circuit Judges.

Appeal from denial of petition for a writ of habeas corpus after hearing before T. Emmet Clarie, *United States District Judge* for the District of Connecticut. Affirmed.

DONALD A. BROWNE, Assistant State's Attorney for Fairfield County, Connecticut (JOSEPH T. GORMLEY, JR., State's Attorney), *for Appellee.*

* Senior United States Circuit Judge of District of Columbia Circuit, sitting by designation.

EDWARD F. HENNESSEY, Esq., of Hartford, Connecticut, *for Appellant.*

DANAHER, *Senior Circuit Judge*:

Charged with carrying a pistol on his person without a permit, §29-35 of the Connecticut General Statutes, with having narcotic drugs in his control, §19-246, and having a weapon in a motor vehicle occupied by him, §29-38, appellant was convicted in the Superior Court for Fairfield County, Connecticut, after a trial to the court. His conviction was affirmed on appeal, *State v. Williams*, 157 Conn. 114, 249 A.2d 245 (1968), *cert. denied* 395 U.S. 927 (1969). Thereupon he sought habeas corpus in the United States District Court for the District of Connecticut raising claims identical with those which had been considered theretofore in the state courts. His petition alleged that the evidence used against him in his state court trial was the product of an illegal search and seizure. Additionally he claimed he had been denied a speedy trial. District Judge Clarie denied relief, and appellant now has turned to us. We affirm.

I.

After a hearing, Judge Clarie found to have been substantiated the facts set forth in the Superior Court record and relied upon by the Supreme Court of Connecticut. Compendiously restated, we may note the following here pertinent:

"At 2:15 on a Sunday morning, a sergeant of the Bridgeport police department was patrolling alone in a section of Bridgeport noted for its high incidence

of crimes of various kinds. There he met a person known to him and considered by him to be trustworthy and reliable who pointed to an automobile parked on the other side of the street and told him that a person seated in the vehicle was armed with a pistol at his waist and had narcotics in his possession. The defendant was the occupant of this automobile and was seated on the passenger's side of the front seat. The sergeant walked across the street, tapped on the window of the automobile and told the defendant to open the door. The defendant rolled down the window of the door, and the sergeant immediately reached directly to the defendant's waistband and removed a fully loaded, .32-caliber revolver from the waistband of the defendant's trousers. He thereupon arrested the defendant, and thereafter a search was made of the defendant and the automobile. The search disclosed . . . a machete under the front seat, twenty-one cellophane packets containing a white substance in the defendant's wallet and six similar packets in a jar in the defendant's right-hand coat pocket. Later tests of ten of the cellophane packets established that they contained heroin." *State* v. *Williams*, *supra*, 157 Conn. at 116, 117, 249 A. 2d at 248, 249.

The Supreme Court of Connecticut decided that under the circumstances shown, the conduct of the officer was justifiable under the applicable Connecticut statutes.[1]

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1 Title 6, § 49, Connecticut General Statutes Annotated, provides in pertinent part:

"... [P]olice officers ... in their respective precincts, *shall arrest*, without previous complaint and warrant, any person for any offense in their jurisdiction, when such person is taken or apprehended in the act or on the *speedy information of others*, and members ...

Thus the arrest which followed was fully sustainable quite aside from any authority given the officer by §6-49; his action was reasonable for he had not conducted a general exploratory search, he had merely grabbed the loaded revolver from the place where his informant had said it would be. In reliance upon *Terry* v. *Ohio*, 392 U.S. 1 (1968), the Court found that the course taken by the officer was far less extensive than that found reasonable in *Terry*.

II.

That the findings and conclusions of the Connecticut courts were not insulated from examination by Judge Clarie is obvious. *Ker* v. *California*, 374 U.S. 23, 34 (1963). Granting that the law of the state where the arrest without warrant took place determines its validity, *United States* v. *Di Re*, 332 U.S. 581, 589, *United States* v. *Viale*, 312 F.2d 595, 599 (2 Cir. 1963), we take account of the federal constitutional standard in appraising the issue here. Williams was arrested for illegal possession of

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of an organized local police department . . . shall arrest, without previous complaint and warrant, any person who such officer has reasonable grounds to believe has committed or is committing a felony. Any person so arrested shall be presented with reasonable promptness before proper authority." (Emphasis added.)

The Connecticut courts have construed the statute to require that an officer "shall" arrest on the "speedy information of others," and so as an Act passed primarily to guide officers in the performance of their duties. *State* v. *Adinolfi*, 157 Conn. 222, 226, 253 A.2d 34 (1968); *Sims* v. *Smith*, 115 Conn. 279, 161 A. 239 (1932); *McKenna* v. *Whipple*, 97 Conn. 695, 701, 118 A. 40 (1922); *Price* v. *Tehan*, 84 Conn. 164, 167, 79 A. 68 (1911); and see *United States* v. *Traceski*, 271 F. Supp. 883, 885 (D. Conn. 1967).

Indeed, as bearing upon an officer's reliance upon speedy information, §53-168 provides punishment by fine or imprisonment or both for any person who knowingly makes to a police officer a false report or false complaint that a crime has been or is being committed.

a revolver. If that arrest were lawful, evidence secured as an incident thereto might properly be received. Were the facts and circumstances within the knowledge of the officer and of which he had reasonably trustworthy information sufficient to warrant a man of reasonable caution in the belief that an offense was being committed? The answer to that question determines the present issue. *Brinegar v. United States*, 338 U.S. 160, 175-176 (1949); *United States v. Traeski*, 271 F. Supp. 883, 885 (D. Conn. 1967); *cf. United States v. Rose*, 418 F.2d 38, 39 n. 2 (2 Cir. 1969), *cert. denied*, 397 U.S. 998 (1970).

Inevitably, issues such as ours must be resolved upon the particular facts which vary from case to case. See, e.g., the discussion by Circuit Judge (now Justice) Blackmun in *Rodgers v. United States*, 362 F.2d 358, 362 (8 Cir. 1966), followed in *Kauser v. United States*, 394 F.2d 601, 605 (8 Cir.), *cert. denied*, 393 U.S. 919 (1968); *cf. Smith v. United States*, 358 F.2d 833, 835 (D.C. Cir. 1966) (Opinion by Circuit Judge, now Chief Justice, Burger).

So it is that our appellant relies upon *Sibron v. New York*, 392 U.S. 40 (1968), even as he would discount the companion case involving *Peters*, 392 U.S. at 66, and would reject the reasoning of *Terry v. Ohio*, 392 U.S. 1 (1968). The Court itself spelled out a distinction in *Chimel v. California*, 395 U.S. 752, 762 (1969). Where *Terry* had held that the scope of the search must be strictly tied to and justified by the circumstances involving a protective search for weapons, in *Sibron* the policeman had not been motivated by or his action limited to the objective of protection. On the contrary, *Chimel* explained, the officer had put his hand into the suspect's pocket with the purpose of finding narcotics which indeed were found.

In our case, the officer testified that he reached for the gun in concern for his own protection, and "I didn't want him to use the pistol on me, sir."

Chimel made clear that

> "When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." 394 U.S. 752, 762-763.

So, we turn back, once again, to the circumstances under which the arrest occurred.

Here the officer received a complaint from an informant who was known to him, considered by the officer to be trustworthy and reliable, and one who in the past, as Judge Clarie found, had supplied valuable information regarding criminal activities. Cf. *United States* v. *Gazard Colon*, 419

F.2d 120, 122 (2 Cir. 1969). At once let it be noted additionally, that this was not the usual "informant" detailing aspects of some earlier action. He described current circumstances there and then constituting a felony under Connecticut law.

This was an eye-witness, invested with "built-in credibility." *McCreary* v. *Sigler*, 406 F.2d 1264, 1269 (8 Cir.), *cert. denied*, 395 U.S. 984 (1969); cf. *United States* v. *Acarino*, 408 F.2d 512, 514 (2 Cir.), *cert. denied*, 395 U.S. 961 (1969). He pointed out to the officer that there was at that very time a car parked across the street, there was a person seated in that vehicle; that person was armed; that he had a pistol at his waist and had narcotics in his possession.

Since this was a Bridgeport police sergeant, it is not unreasonable to infer he was experienced. Patrolling alone in an area noted for its high incidence of crimes of various kinds, he received the complaint that a crime was then in progress. Guided by Connecticut law, he was bound to act on the speedy information then at hand. *Supra* n. 1, and compare *Jackson* v. *United States*, 408 F.2d 1165, 1169 (8 Cir.), *cert. denied*, 396 U.S. 862 (1969). He crossed the street, saw the appellant in the car, and could readily check personally on the facts made available to him. Then he told that person to open the car door. Instead, the latter rolled down the window. The gun was at the appellant's waist just as the witness had described, and the officer seized a fully-loaded pistol. He thereupon arrested Williams.

That Williams, unlike *Terry*, was seated in a car is immaterial under the circumstances here. In determining whether the officer as a reasonably prudent man in the

circumstances acted reasonably in the belief that his safety might be in danger, we can not fail to give due weight to the specific reasonable inferences which he was entitled to draw from the facts in light of his experience. Swift measures were required that the exact facts might be determined and that the threat of harm be neutralized. The protection of the police officer required no less.[2]

Consequent upon the arrest, immediate search disclosed that Williams had a machete at his feet under the seat of the car. The intrusion, in short, was "reasonably designed" to discover, not only the pistol, but "other hidden instruments for the assault of the police officer." *Terry* v. *Ohio*, 392 U.S. 1, 29 (1968).

We may properly conclude here with Chief Justice Warren that:

> ". . . We are now concerned with more than the governmental interest in investigating crime; in addition, there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a

2. Mr. Justice Black has emphasized that the test in such situations, in last analysis, turns upon "reasonableness." *Preston* v. *United States*, 376 U.S. 364, 367 (1964). He is not alone in that view. Another noted jurist has observed:

> It does not seem consistent with the objective of deterrence that the maximum penalty of exclusion should be enforced for an error of judgment by a policeman, necessarily formed on the spot and without a set of *United States Reports* in his hands, which is not apparent years later to several Justices of the Supreme Court. At least in cases of this sort, where, in contrast to confessions of dubious reliability, the evidence cannot impair any proper defense on the merits, the object of deterrence would be sufficiently achieved if the police were denied the fruit of activity intentionally or flagrantly illegal – where there was no reasonable cause to believe there was reasonable cause.
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> H. Friendly, *The Bill of Rights as a Code of Criminal Procedure*, 53 California Law Review, 929, 952 (October, 1965).

weapon that could unexpectedly and fatally be used against him." *Terry* v. *Ohio*, *supra*, at 23.

We agree with the Connecticut Supreme Court and with the District Judge that here the arrest of Williams was valid.[3] The search incident to the arrest accordingly was lawful and the weapons and the narcotics were correctly received in evidence against Williams.

III.

Appellant contends that he had been denied a speedy trial. Following appellant's arrest on October 30, 1966, there were various pre-trial motions after which the appellant was bound over from the lower court to the Superior Court. On March 20, 1967 appellant's counsel, for the first time, made an oral motion for early trial. The case was at once assigned for trial on April 4, 1967, and following trial, the judgment appealed from was rendered on April 28, 1967. We find no merit in this contention.[4]

IV.

Appellant's argument concerning nondisclosure of the "informant" must fall. He developed no compliance with criteria such as had been set forth in *Roviaro* v. *United States*, 353 U.S. 53, 61 (1957). There was no indication of

3 See, generally, *United States* v. *Thompson*, 420 F.2d 536, 540-541 (3 Cir. 1970); *Klingler* v. *United States*, 409 F.2d 299, 302-307 (8 Cir.), *cert. denied*, 396 U.S. 859 (1969); *cf. Chambers* v. *Maroney*, 399 U.S. 42, 51 (1970) and *United States* v. *Gorman*, 355 F.2d 151, 154-155 (2 Cir. 1965).

4 *United States* v. *DeLeo*, 422 F.2d 487, 493, 496 (1 Cir.), *cert. denied*, 397 U.S. 1037 (1970); *United States ex rel. Solomon* v. *Mancusi*, 412 F.2d 88 (2 Cir.), *cert. denied*, 396 U.S. 936 (1969); *United States* v. *Maxwell*, 383 F.2d 437, 441 (2 Cir. 1967) and *United States* v. *Fay*, 313 F.2d 620, 623 (2 Cir. 1963).

how the informant's testimony could help establish this appellant's innocence. *Rugendorf v. United States*, 376 U.S. 528, 535 (1964). The Court has never "approached the formulation of a federal evidentiary rule of compulsory disclosure where the issue is the primary one of probable cause, and guilt or innocence is not at stake." *McCray v. Illinois*, 386 U.S. 300, 308-311 (1967). Surely there is no absolute rule in any event as to these situations, and under the circumstances of this case, no error has been made to appear.

Affirmed.*

FRIENDLY, *Circuit Judge* (dissenting):

As this case was argued both in the district court and on appeal, Connecticut sought to validate the police sergeant's actions solely on the basis of "stop and frisk." Eschewing the argument that Officer Connolly had probable cause for arrest, it contended that he did have enough cause to make it reasonable to demand that Williams open the door of the car.[1] Once that proposition was established, the State's argument continued, quite logically, as follows:

(1) Since leaving Williams in the car without immediate removal of the gun would have exposed the officer to danger, he was justified in reaching into Williams' waistband and taking the gun without attempting to "pat," a course impracticable under the circumstances;

(2) Having found the gun, the officer had reasonable grounds for arresting Williams, since persons reputedly

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* The Court is indebted to Edward F. Hennessey, Esquire, of Hartford who without remuneration has so earnestly and diligently represented the appellant.

1 The State does not contend that Williams' action was voluntary.

engaged in the narcotics traffic do not ordinarily have gun permits; and

(3) Since the arrest was thus valid, the search was reasonable, at least under pre-*Chimel* law.

My difficulty was, and is, not with these three steps but with the premise underlying them, namely, that Officer Connolly had "constitutional grounds to insist on an encounter, to make a *forcible* stop," *Terry* v. *Ohio*, 392 U.S. 1, 32 (concurring opinion of Harlan, *J.*).[2]

As I read my brother Danaher's opinion, he believes that when Connolly approached Williams' car, the officer had sufficient cause not simply for a stop but for an arrest. I cannot agree. The officer's own observation—nothing more than seeing a man sitting alone in a car at 2:15 A.M. in a "high-crime" area—fell far short of what the Court held insufficient in *Henry* v. *United States*, 361 U.S. 98 (1959), which also involved the arrest of occupants of an automobile. Almost everything must therefore turn on what the unnamed informer said, and the value of his statement does not approach the requirements laid down in the three Supreme Court decisions which establish the constitutional parameters in this area. These are *Draper* v. *United States*, 358 U.S. 307 (1959), where the combination of information and observation was held sufficient for a warrantless arrest, and *Aguilar* v. *Texas*, 378 U.S. 108 (1964), and *Spinelli* v. *United States*, 393 U.S. 410 (1969), where affidavits for search warrants were held insufficient. In contrast to the

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2 It seems clear that this is the threshold issue. I do not read the Chief Justice's opinion as holding otherwise, although, as Mr. Justice Harlan indicated, 392 U.S. at 32, the thought may not have been "fully expressed." If the initial intrusion is justified, the privilege of the officer to take reasonable steps believed in good faith to be necessary for his own safety scarcely requires argument.

named informer in *Draper*,[3] a "special employee" of the Narcotics Bureau who had given reliable information about narcotics for six months, the only basis for Officer Connolly's belief in the unnamed informer here was that on one prior occasion the latter had given information about homosexual activity at the Bridgeport Railroad Station, which, however, was never substantiated and did not lead to an arrest. While the officer's explanation that the suspect in the station desisted because he saw the police coming may be reasonable enough, the episode, even if it had turned out more successfully for the police, would scarcely establish the informer as an authority on narcotics or guns. In addition, the informer in *Draper* had provided a detailed description of the scenario which the suspect later performed, thus making the report one that, in the language of *Spinelli*, 393 U.S. at 417-18, "was of the sort which in common experience may be recognized as having been obtained in a reliable way." By contrast, the informer here, assuming he existed,[4] related a single fact with no indication of how he had come upon it. The inarticulate premise for the reliability of this scant information, namely, that no one could have stated such a fact unless he had personally observed it, is precisely the view that *Aguilar*, 378 U.S. at 113-14, and *Spinelli*, 393 U.S. at 416-17, rejected. It is as true here as in *Spinelli*, 393 U.S. at 417, that "this meagre report could easily have been obtained from an off-hand remark heard at a neighborhood bar,"[5] and there

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3 Named doubtless because he had died within a few days after the arrest.

4 It is cause for no small wonder that on the first suppression hearing, Officer Connolly never mentioned the informer but said he had responded to a police signal. In the subsequent hearing the informer appeared and the signal disappeared. See note 9 *infra*.

5 The majority opinion urges against this that because the alleged informant was allegedly across the street, he should be regarded as

was less, in fact nothing, in the way of meaningful corroboration by police investigation before the intrusion. I therefore turn to what I regard as the serious and doubtful issue whether, despite the absence of probable cause for arrest, Officer Connolly was nonetheless justified under *Terry* v. *Ohio, supra,* 392 U.S. 1, in demanding that Williams open the door of the car.

It has been well said that *Terry* and the two other cases decided with it, *Sibron* v. *New York* and *Peters* v. *New York,* 392 U.S. 4 (1968), constitute "the Court's first word —but certainly not its last—on the subject of stop and frisk . . . . [T]his was the Court's first foray into this particular thicket, and it is thus understandable that it made a conscious effort to leave sufficient room for later movement in almost any direction." La Fave, "Street Encounters" and the Constitution, 67 Mich. L. Rev. 39, 46 (1968). Of the three decisions, only in *Terry* did a majority of the Court sustain a stop and protective search where there had been less than probable cause for arrest.[6] The Chief Justice was at pains to make clear the limited character of the holding, when he said in the concluding paragraph of his opinion, 392 U.S. at 30-31: "We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience

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an "eye-witness" and cites *McCreary* v. *Sigler,* 406 F.2d 1264, 1269 (8 Cir. 1969), and *United States* v. *Acarino,* 408 F.2d 512, 514 (2 Cir.), *cert. denied,* 395 U.S. 961 (1969), in support. In *McCreary,* the informant gave a detailed affidavit of his observations including the fact that he had seen McCreary in the phone booth whence the coin box was stolen and heard coins rattling. In *Acarino* the informer had given a detailed scenario à la *Draper.* Here the implicit assumption that the informer had been with Williams in the car or saw him enter it is sheer speculation.

6 The search in *Sibron* was held unlawful because the officer was seeking to find narcotics rather than to protect his own safety; in *Peters* the majority found there was probable cause for arrest.

that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous;" he may make a stop and conduct a protective search under the conditions there defined.

The instant case differs from *Terry* in important respects. Officer Connolly himself observed no "unusual conduct" leading him "reasonably to conclude . . . that criminal activity may be afoot"—unless we are to say that the mere fact of Williams' sitting alone in an automobile at 2:15 A.M. in a "high-crime" area is so inherently suspicious as to justify such a conclusion—a view I would deem exceedingly dangerous. The officer's only basis for believing that Williams may have been committing a crime was the alleged tip from the not proved to be reliable, unnamed informer. See 19 Buffalo L. Rev. 680, 685-86 (1970). Moreover, what Officer McFadden saw in *Terry* was "unusual conduct" giving reason to believe that armed robbery was about to be committed; swift intervention on his part was required to prevent a serious crime of violence. Here, while Officer Connolly could well have thought that Williams would not possess the gun and narcotics mentioned by the informer merely for pleasure, he could not have believed that sale of the narcotics or use of the gun was imminent, and the record suggests that the officer had ample means for placing Williams under surveillance. See, in this connection, Mr. Justice Harlan's concurring opinion in *Sibron*, 392 U.S. at 73.

The question thus becomes whether, even though the decisions of the Supreme Court of Connecticut and the district court in this case go beyond the facts of *Terry* and the narrow statement of its holding, they are nevertheless within its rationale. This seems to lie in the passages, 392 U.S. at 26-27, where the Chief Justice explained

that, in contrast to an arrest, "the protective search for weapons . . . constitutes a brief, though far from inconsiderable, intrusion upon the sanctity of the person"; that, because of the lesser nature of the intrusion, a smaller showing of cause may suffice; and that Terry's "reliance on cases which have worked out standards of reasonableness with regard to 'seizures' constituting arrests and searches incident thereto is thus misplaced." A further signal that the Court was thus adopting a test balancing the amount of cause required to be shown against the extent of the particular invasion of personal security was given by the citation of *Camera* v. *Municipal Court*, 387 U.S. 523, 534-37 (1967). See LaFave, *supra*, 67 Mich. L. Rev. at 54-56; Hall, Kamisar, LaFave and Israel, Modern Criminal Procedure 324-26 (1969).

The Court's decision that less may be required to justify a stop and a protective search than an arrest and a search incidental thereto leaves many open questions. How much less is enough? Does something depend upon the seriousness of the offense? Cf. *Brinegar* v. *United States*, 338 U.S. 160, 183 (1949) (dissenting opinion of Mr. Justice Jackson). What favor, if any, should be shown to intervention aimed at preventing crime rather than detecting it? Cf. LaFave, *supra*, 67 Mich. L. Rev. at 66; 82 Harv. L. Rev. 178, 182 (1968). Do not such factors enter into an appraisal of what the Court evidently regarded as one significant test—whether failure to take immediate action

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7 As said in LaFave, *supra*, 67 Mich. L. Rev. at 57:

> Taking into account the seriousness of the offense does not require the use of some fine-spun theory whereby each offense in the criminal code has its own probable-cause standard; rather, it involves only the common-sense notion that murder, rape, armed robbery, and the like call for a somewhat different police response than, say, gambling, prostitution, or possession of narcotics.

would be "poor police work"? 392 U.S. at 23. While almost everyone would agree it would have been "poor police work" for Officer McFadden to have failed to take action to foil an armed robbery by Terry and his confederates, many would think Officer Connolly would have done well enough to report what he allegedly had been told and the little he had seen.

Only future decisions by the Supreme Court can answer these and other questions. Striking the balance here as best I can in light of the few guidelines thus far available, I would hold the State had not shown sufficient cause to justify a forcible stop:

To begin, I have the gravest hesitancy in extending *Terry* to crimes like the possession of narcotics, see LaFave, *supra*, 67 Mich. L. Rev. at 65-66. There is too much danger that, instead of the stop being the object and the protective frisk an incident thereto, the reverse will be true. Against that we have here the added fact of the report that Williams had a gun on his person. I would follow Mr. Justice Harlan in thinking that "if the State . . . were to provide that police officers could, on articulable suspicion less than probable cause, forcibly frisk and disarm persons thought to be carrying concealed weapons, . . . action taken pursuant to such authority could be constitutionally reasonable." *Terry* v. *Ohio*, *supra*, 392 U.S. at 31. But, as in *Terry*, the State here has done nothing of the sort. Connecticut allows its citizens to carry weapons, concealed or otherwise, at will, provided only they have a permit, Conn. Gen. Stat. §§29-35 and 29-38, and gives its police officers no special authority to stop for the purpose of determining whether the citizen has one. Indeed, as my analysis of the State's argument shows, the narcotics and

the gun are inseparably linked; it is the report about narcotics on which the State pins reasonable cause to arrest for illegal possession of a gun.

If I am wrong in thinking that *Terry* should not be applied at all to mere possessory offenses, and a dictum in *Sibron*, 392 U.S. at 63, indicates that I may be, I would not find the combination of Officer Connolly's almost meaningless observation and the tip in this case to be sufficient justification for the intrusion. The tip suffered from a threefold defect, with each fold compounding the others. The informer was unnamed, he was not shown to have been reliable with respect to guns or narcotics, and he gave no information which demonstrated personal knowledge or—what is worse—could not readily have been manufactured by the officer after the event. To my mind, it has not been sufficiently recognized that the difference between this sort of tip and the accurate prediction of an unusual event is as important on the latter score as on the former. Narcotics Agent Marsh would hardly have been at the Denver Station at the exact moment of the arrival of the train Draper had taken from Chicago unless *someone* had told him *something* important, although the agent might later have embroidered the details to fit the observed facts. Cf. *United States* v. *Comissiong*, 429 F.2d 834 (2 Cir. 1970). There is no such guarantee of a patrolling officer's veracity when he testifies to a "tip" from an unnamed informer saying no more than that the officer will find a gun and narcotics on a man across the street,[8] as he later does. If the state wishes to rely on a tip of that

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8 While the findings of the Connecticut courts and the district court preclude our holding that the unnamed informer did not exist in this case, we can take the danger of fabrication into account in framing a general rule.

nature to validate a stop and frisk, revelation of the name of the informer or demonstration that his name is unknown and could not reasonably have been ascertained should be the price.[9]

Terry v. *Ohio* was intended to free a police officer from the rigidity of a rule that would prevent his doing anything to a man reasonably suspected of being about to commit or having just committed a crime of violence, no matter how grave the problem or impelling the need for swift action, unless the officer had what a court would later determine to be probable cause for arrest. It was meant for the serious cases of imminent danger or of harm recently perpetrated to persons or property, not the conventional ones of possessory offenses. If it is to be extended to the latter at all, this should be only where observation by the officer himself or well authenticated information shows "that criminal activity may be afoot."

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9 The State's claim that Williams failed previously to raise this point is without foundation. At the first hearing on Williams' motion to suppress evidence, Officer Connolly testified he was in a radio car and responded to a police signal directing him to go to the Williams car. No mention of an informant was made at that time. After Williams was bound over to the Fairfield County Superior Court, a second hearing was held and the officer testified that while on patrol he met an undisclosed informant who told him that Williams was in the car with drugs and a gun. Williams' attorney asked who the informant was, but the state objected, the court sustained the objection, and Williams' attorney took an exception. Again, in his amended and second amended petitions for habeas corpus presented to the Superior Court for Hartford County, Williams claimed his conviction was illegal since his "right of confrontation and due process rights were violated by reason of the Court's failure to permit inquiry as to the identity of the police informant upon whose information the probable cause was claimed." Finally, in the Claims of Law which Williams submitted to support his federal habeas corpus petition, he mentioned that he had sought to elicit the identity of the informant but was not permitted to do so; he alleges also that at the federal habeas hearing the judge sustained an objection to questions on the informant's identity.

392 U.S. at 30. I greatly fear that if the decision here should be followed, *Terry* will have opened the sluice-gates for serious and unintended erosion of the protection of the Fourth Amendment.

I would grant the writ.

Petition for Rehearing.

POINTS OF LAW AND FACT FOR RECONSIDERATION

The petitioner submits that this decision especially in light of the facts cited in the dissent presents the following questions for reconsideration:

1. Does a tip to a police officer from an undisclosed informant that a man is seated in a car with drugs and a gun provide reasonable grounds to conduct a stop-and-frisk where there is no credible evidence offered to show either that the informant was reliable or that the informant's tip resulted from personal observation or from some other reliable source?

2. Does the decision in *Terry* v. *Ohio*, 392 U.S. 1 (1968) permit a stop-and-frisk where there is no showing that the officer either observed conduct or possessed other credible information to show that the suspect presented an immediate threat of danger to the officer or to the public?

3. Does the majority holding in this case constitute an undue extension of the doctrine of *Terry* v. *Ohio*, *supra*, by permitting a stop-and-frisk in any instance where an officer has reason to believe a person is armed?

   a. Does the same conclusion apply even if, by State law, a citizen is permitted to carry concealed weapons?

4. Does the majority holding that the undisclosed informant was reliable conflict with the standards of proof to establish reliability as set forth in *Spinelli* v. *United States*, 393 U.S. 410 (1969) and *Aguilar* v. *Texas*, 378 U.S. 108 (1964)?

   a. Is proof that an undisclosed informant gave six prior uncorroborated tip concerning homosexual ac-

tivity sufficient to establish the informant's reliability with respect to crimes involving possession of drugs or guns?

5. Does the majority holding that the overall evidence established that the tip from the informant had a reliable basis in fact also conflict with the standards of proof set forth in *Spinelli* v. *United States, supra,* and *Aguilar* v. *Texas supra*?

a. Does the statement, "There's a man in that car with a gun at his waist and drugs," supply a sufficient foundation for a police officer to conclude that this tip is based upon the informant's own observation or other reliable information, if the car is in sight and the suspect visible when the information is given?

Based upon the conclusions of fact and law reached in the majority holding the petitioner submits that all these questions would be answered in the affirmative. However, the petitioner urges that based upon present decisional law of the United States Supreme Court, each of these questions should properly be answered in the negative. For this reason he urges the Court to reconsider this decision in light of these questions and the implication of affirmative answers to them.

Argument

The petitioner believes that a rehearing in this case would be warranted. The Petitioner also suggests the possibility that a rehearing en banc might be appropriate.

Without desiring to appear presumptuous the petitioner feels that the majority view represents a significant departure from the narrow concept of stop-and-frisk as it was articulated in *Terry* v. *Ohio,* 392 U.S. 1 (1968). The

scope of this departure is made clear in the dissenting opinion.

The concept of stop-and-frisk itself represented a substantial move away from the traditional view that probable cause was necessary in order to permit a police intrusion upon one's person or property. This doctrine recognized a need for limited intrusions under exigent circumstances. Those exigent circumstances only existed when there was reasonable cause on the part of a police officer to believe that an individual was armed and dangerous. The rationale of this rule is understandable notwithstanding the fact that it opened the door to invasions of privacy not heretofore authorized by the Supreme Court. However, there is in this country a marked difference between being armed and being armed and dangerous. Petitioner cannot speak for all the States in the Union, but he can state that it is perfectly permissible in Connecticut, where this incident occurred, to carry concealed weapons on one's person or in one's car, provided only that proper licensing or registration has taken place. Conn. Gen. Stats. §§ 29-35, 29-38. The wisdom of having our citizenry walking our streets with pistols at their waists is not, of course, at issue. However, the right of the police to stop-and-frisk these citizens is at issue. Further, the use of the disclosure of this concealed gun as a basis for an arrest and a general exploratory search is also at issue, since this is what in fact occurred in this instance.

The petitioner, therefore, submits that this case presents a crucial question as to when the right to stop-and-frisk arises.

The petitioner submits that the majority would allow a stop-and-frisk whenever there is reasonable grounds to believe the suspect is armed. The petitioner, however, believes that the Supreme Court did not so hold in *Terry* v. *Ohio, supra.* The petitioner further submits that by ignoring the requirement that the officer have reasonable grounds

to believe that the suspect is dangerous, it extended the law of stop-and-frisk beyond any rule of law either stated in or suggested by *Terry* v. *Ohio, supra,* and *Sibron* v. *New York,* 392 U.S. 40 (1968).

The second issue which presents a question of some moment is the question of what constitutes sufficient proof of reasonable grounds to conduct a stop-and-frisk. In the majority opinion the Court concluded that the informant who furnished the tip was reliable and that the information furnished was reliable. The dissent, however, concluded that neither of these criteria were met. Since the evidence in this case is essentially undisputed it seems that a future reader of this decision could conclude that by its decision the Second Circuit held:

1. A reliable informant is any person who ever gave a police officer any information in the past, if the officer personally believed that that past information was true, notwithstanding his inability to substantiate it.

2. It is unnecessary for the officer to determine that the information given by the informant resulted from personal observation or from some other reliable source if the suspect is visible to the officer at the time it is given.

These two conclusions it is submitted conflict with the requirements set forth in *Spinelli* v. *United States,* 393 U.S. 410 (1969) and *Aguilar* v. *Texas,* 378 U.S. 108 (1964), for establishing probable cause to arrest based on the information of an undisclosed informant.

Further if, as the petitioner submits, and, if, as the dissent appears to hold, the evidence in fact was insufficient to satisfy either test of reliability as spelled out in *Spinelli* v. *United States, supra,* and *Aguilar* v. *Texas, supra,* then the final question to be resolved is whether the tip of an unreliable informant is a sufficient basis to establish reasonable grounds to conduct a stop-and-frisk.

Referring again to *Terry* v. *Ohio, supra,* and *Sibron* v. *New York, supra,* the petitioner submits that it is not. The decisional law to date seems to require more. In particular the *Terry* case seems to suggest that the exigencies which justify stop-and-frisk arise from conduct which suggests to the trained officer that danger is imminent.

The petitioner submits that a tip alone without any observable conduct on the part of the suspect suggesting present or contemplated dangerous activity falls short of the quantum of proof necessary to justify any interference with his liberty or intrusion upon his person.

For these reasons the petitioner submits that the implications of this case carry it far beyond present Supreme Court decisions in the fields both of stop-and-frisk and of probable cause based upon undisclosed informants. And because of this petitioner requests that the matter be reheard and suggests also that it might be an appropriate case for review by the Court en banc.

ROBERT WILLIAMS
Petitioner-Appellant

By: EDWARD F. HENNESSEY
His Attorney
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799 Main Street
Hartford, Connecticut 06103

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 64—September Term, 1970.

(Rehearing *in banc* ordered March 3, 1971

Decided April 14, 1971.)

Docket No. 34826

ROBERT WILLIAMS,

Petitioner-Appellant,

—v.—

FREDERICK E. ADAMS, Warden,
Connecticut State Prison,

Respondent-Appellee.

Before:

LUMBARD, *Chief Judge,*
FRIENDLY, SMITH, KAUFMAN, HAYS,
ANDERSON and FEINBERG, *Circuit Judges.*

PER CURIAM:

Upon application by petitioner, a majority of the active members of this court voted to reconsider *in banc* the decision of the panel in this case on the record and briefs originally filed, without further oral argument. Both parties were invited to file supplemental briefs, and both have done so. Upon reconsideration, we conclude that on the basis of the facts then known to him, Sergeant Connolly had neither probable cause to arrest Williams nor any

other sufficient cause for reaching into Williams's waistband, an action which led to the subsequent search of Williams's car and the discovery of a machete and narcotics later introduced in evidence at Williams's trial. See *Terry* v. *Ohio*, 392 U.S. 1 (1969); *Spinelli* v. *United States*, 303 U.S. 410 (1969); *Aguilar* v. *Texas*, 378 U.S. 108 (1964); *Henry* v. *United States*, 361 U.S. 98 (1959); *Draper* v. *United States*, 358 U.S. 307 (1959). Since those illegally seized items should have been excluded from evidence, Williams's conviction must be set aside. Accordingly, we reverse the order of the district court denying Williams's petition for a writ of habeas corpus.

HAYS, *Circuit Judge* (dissenting):

The facts of this case were as follows:

> "At 2:15 on a Sunday morning, a sergeant of the Bridgeport police department was patrolling alone in a section of Bridgeport noted for its high incidence of crimes of various kinds. There he met a person known to him and considered by him to be trustworthy and reliable who pointed to an automobile parked on the other side of the street and told him that a person seated in the vehicle was armed with a pistol at his waist and had narcotics in his possession. The defendant was the occupant of this automobile and was seated on the passenger's side of the front seat. The sergeant walked across the street, tapped on the window of the automobile and told the defendant to open the door. The defendant rolled down the window of the door, and the sergeant immediately reached directly to the defendant's waistband and removed a fully loaded, .32-caliber revolver from the waistband of the defendant's trousers. He thereupon arrested

> the defendant, and thereafter a search was made of the defendant and the automobile. The search disclosed . . . a machete under the front seat, twenty-one cellophane packets containing a white substance in the defendant's wallet and six similar packets in a jar in the defendant's right-hand coat pocket. Later tests of ten of the cellophane packets established that they contained heroin." *State* v. *Williams*, 157 Conn. 114, 116-17 (1968); cert. denied, 395 U.S. 927 (1969).

In *Brinegar* v. *United States*, 338 U.S. 160, 175 (1949), the Court said:

> "In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act."

A familiar way of testing the "factual and practical considerations of everyday life" is to ascertain what practical everyday people would do in the given factual circumstances. I would suppose that very close to one hundred per cent of the people of this country, if they were asked whether in the situation in which he found himself, the Bridgeport police sergeant's actions were those of a reasonable and prudent man, would unhesitatingly reply in the affirmative. If the police officer had disregarded the information that a man sitting alone in a car in a high crime area at 2:15 in the morning had a gun stuck in his belt, his conduct, far from being reasonable and prudent, would have been bizarre and erratic.

An "exclusionary rule" which deters police officers from taking ordinary precautions against criminal conduct and encourages possession of guns, machetes and narcotics, is surely an unacceptable rule.

Order of the Supreme Court Granting Certiorari.

SUPREME COURT OF THE UNITED STATES

No. 70-283, October Term, 1971

FREDERICK E. ADAMS,

Petitioner,

vs.

ROBERT WILLIAMS,

Respondent.

ORDER OF THE SUPREME COURT GRANTING CERTIORARI—Filed January 10, 1972

"The motion of the respondent for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted."

Testimony in Fairfield County, Superior Court Case No. 16,746, Motion to Suppress.

* * * * * *

(5) JOHN CONNOLLY, having been called as a witness, was duly sworn, and testified upon his oath as follows:

The Clerk: State your name, please.
The Witness: Sgt. John Connolly.
The Clerk: Spell your last name for the Court, please.
The Witness: C-o-n-n-o-l-l-y.
The Clerk: And your address?
The Witness: 75 Success Avenue, Bridgeport.
The Clerk: You may be seated, sir.

Direct Examination by Mr. Browne:

Q. What is your occupation, please? A. Police Sergeant, City of Bridgeport Police Department.

Q. And for how long have you been associated with the Bridgeport Police? A. This is my 20th year.

Q. Whether or not you were on duty as a Bridgeport Police Officer on the evening of October 30, 1966? A. Yes, sir.

Q. Had you also been on duty on the preceding evening, the evening of the 29th and morning of October 30th? A. Yes, sir.

Q. And was that the date that you had occasion to see the accused in this case, Robert Williams? A. Yes, sir.

Q. Do you recall, Officer, yourself, whether it was the (6) morning of October 30th or the 31st? A. The morning of October 30th.

Q. And what shift were you working that day, Officer? A. It is referred to as the midnight shift.

Q. And what hours does that encompass? A. From twelve midnight to eight a.m.

Q. And how were you on duty? Were you on foot patrol? A. No, I was on Radio Car Patrol.

Q. And were you alone or was there someone with you? A. I was alone.

Q. Now, during your tour of duty, did you have a conversation with anyone relevant to a person being in an automobile, a particular automobile? A. I did, sir.

Q. And at approximately what time was that conversation held? A. Approximately at 2:15 a.m. on the 30th.

Q. And this person that you spoke with, had you known him or her before? A. I had.

Q. And had you on other occasions obtained information from this particular person?

Mr. Green: I have to object to the question as leading, your Honor?

The Court: Objection overruled.

Mr. Green: May I have an exception

The Court: You may have an exception.

(7) A. I had.

Q. Had that information been correct that you had received previously? A. It had.

Q. Now, where did this conversation take place? A. In the gasoline service station at Hamilton and East Main Street, Bridgeport, in the parking area adjacent to the service station.

Q. And as best you recall it, just exactly what did this particular person say? A. I was advised that the person sitting in the car nearby had a revolver on his person at his waist and that he also had narcotics on his person.

Q. And was one particular car pointed out to you as being the car in which this person was? A. Yes, it was, sir.

Q. And where was that car located? A. It was parked on the north side of Hamilton Street facing East Main

Street about two car lengths west of the intersection of Hamilton and Green Street.

Q. Incidentally, Officer, are you familiar with this particular neighborhood? A. I am.

Q. And for how long have you done police duty in that particular area or neighborhood? A. Well, at various intervals during my police service, possibly a total of six years.

(8) Q. All right. And can you describe what type of a neighborhood it is? A. It is a neighborhood with a high incident of crime of various kinds.

Q. Did you proceed to this car that had been pointed out to you? A. I did, sir.

Q. And how did you get there? A. Walked, sir.

Q. And was in fact an occupant in the car? A. Yes.

Q. And where was this occupant seated? A. On the passenger's side of the front seat.

Q. And what did you do at the car? A. I tapped on the window and advised the occupant to open the door.

Q. And what happened? What did he do? A. He rolled down the window.

Q. And what did you do at that time? A. I reached in and removed a revolver from the waistband of his trousers.

Q. Had you seen this revolver before you reached in and took it? A. No, sir.

Q. That was where the person had told you the revolver was located. A. Yes, sir.

(9) Q. Were you in concern for your own protection at that time? A. Yes, sir.

Q. You were alone. A. Yes, sir.

Q. And this was about 2:30. A. About 2:20.

Q. 2:20. A. Yes.

Q. Now, the person whom you removed the revolver from, who is he, sir? A. Robert Williams.

Q. That is the accused in this case. A. The accused.

Q. Seated at the counsel table. A. Yes.

Q. And was he subsequently searched further? A. Yes, sir.

Q. And do you know what else was found in his possession at that time? A. Substances which were later identified as narcotics.

Q. And where were they? A. He had some in his coat pocket, right-hand coat pocket, and some in his wallet.

Q. Now, at any time, did you actually tell Mr. Williams that he was under arrest? A. When I found the revolver, I advised him he was under (10) arrest.

Q. And then you proceeded to search him further. A. Yes, sir.

Q. And at any time prior to advising him that he was under arrest, had you done any type of a search of his pockets or any of his clothes? A. No, sir.

Q. So that, you made no search of his person other than to remove this gun prior to his arrest. A. I removed the gun. I didn't make any search.

Mr. Browne: You may inquire.

Cross Examination By Mr. Green:

Q. Sgt. Connolly, have you been assigned to duty in this area over a period of months? A. Yes, sir.

Q. And you are well familiar with it and the people in it. Is that right? A. Yes, sir.

Q. And I believe you described it as an area that has a high incidence of crime. A. That's right, sir.

Q. Now, on the night in question, you spoke to somebody about this automobile. A. Yes, sir.

Q. And would you tell the Court exactly what this person told you? A. That there was a man sitting in a car with

a gun on (11) his person at his waistband, and that this man also had drugs.

Q. And is that the full limit of what you were told at that time? A. To the best of my recollection.

Q. Now, search you recollection carefully, Sergeant. I have your words: "There was a man sitting in a car, and that he had drugs on his person." A. "That car over there would be it."

Q. Now, this was told you where? A. In the yard of gas station at the corner of Hamilton and East Main Street.

Q. Now, which corner is it on, Sergeant? A. It's on the southeast corner.

Q. On the southeast corner. A. Yes.

Q. And the yard is where, close to Hamilton Street or on East Main Street? A. It covers the entire southeast corner.

Q. Tell us exactly where you were standing when you were talking to this person? A. Approximately in the center of the quarter section that would be best identified as that portion of the gas station yard as the northeast section, I feel.

Q. All right. Now, the person said, "There is a man sitting in a car down there." Is that right? A. "That car over there."

Q. Well, was the car visible from where you were stand-
(12) ing A. Yes.

Q. And what kind of a car was it? A. 1958 Plymouth, two door hardtop, color tan.

Q. And your car was parked where? A. In the gas station yard near the gas station itself.

Q. So, you then proceeded down the street, and you saw the accused sitting in the automobile. A. It was more proceeding diagonally across the yard and the street.

Q. So, from where the informant was speaking to you, you could observe the accused. A. Yes, sir.

Q. You went over there. And did you have a pistol drawn? A. No, sir.

Q. You started talking to him, asked him to open the door, I think you said. A. Yes, I told him, "Open the door."

Q. And at that point then, he rolled the window down. A. That's right, sir.

Q. And you felt behind him in the waistband. A. No, across his front.

Q. You felt across his front. A. I didn't feel. I reached in and took the revolver that was there.

Q. And when you got the revolver, you found that the information which you had been given was true, and you arrested (13) him. A. That's right, sir.

Q. And your discovery of the heroin wasn't made until later. A. That's right.

Q. And actually you didn't search the car until later. A. Well, a short time later.

Q. Other policemen came to the scene. A. Yes, that's when the search was made.

Q. That's when the search was made. A. Yes.

Q. And when you took this pistol out of his waistband, you then placed him under arrest. A. Yes.

Q. And waited for other policemen to come. A. Yes.

Q. And searched the automobile further. A. Yes.

Q. Now, who was the informant who spoke to you in the parking lot of the gas station?

Mr. Browne: Object to that, your Honor.

The Court: Objection sustained.

Mr. Green: I claim it, your Honor.

May I know the basis of the objection, your Honor?

Mr. Browne: I think that is in the nature of a privileged communication. I rely on the very recent decision of McCray versus somebody in the United

States (14) Supreme Court, which holds that in the nature of a privileged communication. There is no obligation on the police officer to disclose who the informant is.

Mr. Green: I don't think there is any Connecticut decision that holds that, your Honor. The McCray case which came down very recently merely holds that the obligation to disclose is not constitutional in its nature. And I claim that under 6-49, the arrest statute,—and I presume it is claimed here that the search was incidental to an arrest—that the officer has to have reasonable grounds that a felony was being committed.

Now, in determining whether or not he has reasonable grounds and whether a felony was being committed, I certainly think the person who gave him the information becomes extremely important. Outside of that, the Court cannot make a determination of this issue.

The Court: Objection is overruled without comment. I don't see any need for having anything on the record. I think it is a well known fact of disclosure of this type, of this nature.

Mr. Green: I presume your Honor is ruling that the State's objection is sustained.

The Court: That's correct.

Mr. Green: May I have an exception?

The Court: You may have an exception.

Q. Now, had you known this person before, Officer? (15) A. Which person, sir?

Q. The person who gave you the information. A. Yes, sir.

Q. And you stated that this person had given you prior information with respect to crime. A. Yes, sir.

Q. When? A. On previous occasions, possibly months previous to this occasion.

Q. Well, would you please tell us what information was given and when it was given? A. Well, on the occasion I was assigned to a detail at the Bridgeport Railroad Station. I don't recall the exact time. But it was in the winter of '65. The informant had given me information regarding homosexuals in the railroad station.

Q. What other information had this informant ever given you, Officer? A. None that I can recall right at the time. I had conversed with the informant on occasion and had determined as a consequence of these conversations that the informant was a reasonably trustworthy person.

Q. What did you base this judgment on, Sergeant? A. Well, the observations with regard to criminal activities.

Q. Well, you have mentioned only one, and you don't recall any other, I take it? (16) A. No specific instances.

Q. Now, with respect to the information that was given you about homosexuals in the Bridgeport Police Station, did that lead to an arrest? A. No.

Q. An arrest was not made. A. No. There was no substantiating evidence.

Q. Pardon? A. There was no substantiating evidence.

Q. There was no substantiating evidence ? A. No.

Q. And what do you mean by that? A. I didn't have occasion to witness these individuals committing any crime of any nature.

Q. In other words, after this person gave you the information, you checked for corroboration before you made an arrest. Is that right? A. Well, I checked to determine the possibility of homosexual activity.

Q. And since an arrest was made, I take it you didn't find any substantiating information. A. I'm sorry counselor, you say since an arrest was made.

Q. Was not made. Since an arrest was not made, I pre-

sume you didn't find any substantiating information. A. No.

Q. So that, you don't recall any other specific information given you about the commission of crimes by this informant. (17) A. No.

Q. And you still thought this person was reliable. A. Yes.

Q. And you base this on general conversation. Is that right? A. No, the other occasion that I mentioned, wherein obviously this information I had received was accurate.

Q. If it was accurate, why wasn't an arrest made, Officer? A. As I say, there was no evidence at that particular time to make an arrest on. If you will permit me, these people were apparently aware that I was scrutinizing them and left the scene.

Q. Now, in this case, there was evidence to make an arrest on, am I right? A. Yes.

Q. Because you did find the pistol. A. Yes.

Q. Now, after you found the pistol, how were other cars summoned? A. I had summoned the cars previous to finding the pistol.

Q. And did you then prior to making your further search of the vehicle attempt to get a warrant? A. No, sir.

Q. Because you then had the accused under arrest. Is that right? A. That's right, sir.

Q. So, you then proceeded to order him out of the car. (18) A. Yes.

Q. And you then proceeded to search the car. A. Yes.

Q. And in the course of this search, what did you find? A. That he had twenty-one packs of white substance which later proved to be heroin; he had six additional packages in a jar in his coat pocket which later on proved to be heroin. He had a machete under the front seat of the car, a second revolver in the trunk of the car, numerous other items not connected with the crime.

Q. Do you know whether or not your informant had a criminal record? A. I believe the informant did.

Q. And was her name Jane Cooper?

Mr. Browne: Object to that, your Honor.

The Court: Objection sustained.

Mr. Green: May I have an exception?

The Court: You may have an exception.

Q. Do you know what that criminal record was? A. In detail, no.

Q. But extensive. A. No.

Q. Do you know what type of crime? A. Yes.

Q. Would you please state it for the record? A. Your Honor, if I may, is this a must?

Mr. Browne: I tender no objection to it.

(19) The Court: Pardon?

Mr. Browne: I am not making any objection.

The Court: You must testify then.

A. For the most part, I think the informant's record pertains to—

Mr. Browne: Well, is this something you know, Officer?

The Witness: No.

Mr. Browne: Or something you are speculating about.

The Witness: Speculating.

Mr. Browne: I will object.

The Court: Objection sustained.

Mr. Green: I claim it, your Honor. The officer has testified that he has knowledge of this person, that he had conversations with this person on which he felt he could rely, and I think his knowledge of

this person becomes a vital issue in this case, because it is a question of whether or not he has reasonable grounds to believe the truth of these statements.

The Court: He so stated that he had grounds for it. And he has had contact with him in the past. It may be reliable in certain instances. You are attempting to obtain certain information that had been objected to, to ascertain, not by name, but by description, information the Court has refused to allow. This seems to be an indirect way.

(20) Mr. Green: I am in no sense endeavoring to find this out through indirection.

The Court: You may by indirection get it. So, what you could not get by direction the Court does not intend to permit you to get by indirection.

Mr. Green: If it please the Court, I would like this on the record. Certainly the character and the criminal record of the informant is highly material to the reliability of the information. And it is for these reasons that I find it necessary to ask these questons.

The Court: He says he doesn't know. He says he is speculating. Now, do you know the criminal record of the informer?

The Witness: No.

The Court: You don't.

The Witness: No, not actually.

The Court: That takes care of that.

Mr. Green: Let me just say it once again, your Honor. I am not concerned with whether or not Sgt. Connolly accurately reports this person's police record. I am not trying to establish the police record of the person. He can be in error in terms of what he testifies to. What I am concerned with

is what he thought the police record was and what his knowledge of it was. That is all I am asking.

The Court: Ask him. You are indicating from the (21) examination, not only his knowledge, but as a fact that that is his record.

Mr. Green: No, I am asking him what did he know about this person's police record. Let me rephrase the question, if I may.

By Mr. Green:

Q. Sgt. Connolly, what did you believe the police record of your informant to be as of this time?

Mr. Browne: Well, your Honor, I am going to object to that. If I may make a suggestion. Possibly Mr. Green might ask if he knows as a fact of any conviction at all, of any crime at all.

The Court: He wants to know what the police officer believes concerning this individual's police record, or knew about his police record.

Now, he can testify. Does he know about his police record, if he had a police record? Ask if he had a police record, or if he thought he had a police record, or if he knew he had a police record.

Mr. Green: I think he has already testified that he believed the person had a record. I am asking him what he believed that record to be. Whether his belief is accurate or inaccurate is totally immaterial to this question.

The Court: Yes. What he thought at that particular time, what he thought this particular record was, he can testify to that. It may not be a (22) record. He may not even have a record. Based on that, for that purpose, it is admissible.

Mr. Green: If I may rephrase the question.

Q. Sergeant, at the time of this occurrence, what did you believe the criminal record of this person to be? A. Breach of the peace, loitering.

Q. And nothing else? A. Nothing that I have any knowledge of.

Q. And do you know whether or not these were isolated occurrences, or were there a number of offenses? A. No, I don't know whether these were isolated or whether they consisted of a number of them.

Q. Now, incidentally, when you approached the car in which the accused was sitting, the car was parked at the curb. A. Yes, sir.

Q. The motor was not running. A. No, sir.

Q. The accused was sitting there silently and quietly. A. Yes, sir.

Q. And then, of course, you found the pistol. Is that right? A. That's right, sir.

Mr. Green: I have no further questions.

Redirect Examination by Mr. Browne:

Q. Officer, in addition to the items that you say were found on the accused or in his automobile, do you recall personally seeing any rolled balloons? (23) A. Yes, sir.

Q. And I don't think you mentioned those before. Do you know where they were found? A. In a jar in the suspected right hand leather coat pocket.

Q. And do you know whether the contents of those rolled up balloons were subsequently examined? A. Yes.

Q. And do you know what was the contents of the balloons? A. Heroin, sir.

Q. They were also narcotics. Is that right? A. Yes, sir.

Q. Now, Officer, am I correct that before you went over

to the car in which Mr. Williams was seated, you placed a call on the police radio for additional help? A. Yes, sir.

Q. And other officers in response to that call subsequently came to the scene. A. Yes.

Q. And you did that before you went over to Mr. Williams. A. Yes, sir.

Q. And had you ever gotten any information from this informant at all that was not correct? A. No, sir.

Mr. Browne: I have nothing further.

Recross Examination by Mr. Green:

Q. Had you ever gotten any information from this informant (24) that led to an arrest of an accused person? A. On this occasion.

Q. This was the first one. Is that right, Officer? A. That's right.

Q. Incidentally, in searching the automobile, did you find a pocketbook in the back seat? A. No, sir.

Mr. Green: I have nothing further.

By Mr. Browne:

Q. It was your opinion, Officer, that this person was reliable and trustworthy. Is that right? A. That's right.

The Court: He has answered that question. You may be excused.

Mr. Browne: You may step down.

Testimony in Fairfield County Superior Court Case No. 16,746 Trial.

* * * * * *

(89) JOHN E. CONNOLLY, having been called as a witness, was duly sworn, and testified upon his oath as follows:

The Clerk: State your name, please.
The Witness: John E. Connolly.
The Clerk: Spell your name for the Court, please.
The Witness: C-o-n-n-o-l-l-y.
The Clerk: And your address?
The Witness: 75 Success Avenue, Bridgeport.
The Clerk: You may be seated, sir.

Direct Examination by Mr. Browne:

Q. Your occupation, please, sir? A. Sgt. Bridgeport Police Department.

Q. For how long have you been associated with the Bridgeport Police? A. This is my 20th year.

Q. And for how long have you been a sergeant, sir? A. About two years.

Q. Sergeant, whether or not you were on duty as a police officer on the early morning of October 30th of 1966? A. I was.

Q. And what tour of duty, what hours of your tour of duty did you have that evening, sir? A. Midnight to eight a.m.

Q. And that was a Sunday morning. A. Yes, sir.

Q. Were you on foot patrol that day? (90) A. No, sir.

Q. What were you doing? A. Radio patrol, radio car patrol.

Q. And were you alone in the car, or did you have someone with you? A. I was alone, sir.

Q. Were you covering one particular section of Bridgeport? A. The red sector. It is bordered by the City Line

on the east, the railroad main track on the west, the railroad viaduct on the north and the City Line again on the south, the harbor on the south.

Q. Whether or not you saw the defendant Robert Williams on that morning? A. I did, sir.

Q. And approximately what time was it that you saw him? A. Approximately 2:20 a.m.

Q. Now, whereabouts did you first see him? A. Seated in a car on Hamilton Street.

Q. Hamilton Street is in the City of Bridgeport? A. That's right, sir.

Q. Now, the Robert Williams that we are referring to, is that the same Robert Williams seated at the counsel table here this morning? A. That is, sir.

Q. Did you approach him in this car? A. I did, sir.

Q. And why did you do that, sir? (91) A. I had received information to the effect that he had a gun on his person.

Q. Is Hamilton Street a one way street, sir? A. It is.

Q. And in what direction is it one way, do you know? A. Westbound.

Q. On which side of Hamilton Street was the '58 Plymouth parked? A. The north side.

Q. And where was it in relation to any other street, sir? A. It was approximately two car lengths west of Green Street.

Q. Green Street intersects Hamilton Street, is that right? A. It does.

Q. What direction does that run in, sir? A. North and south.

Q. Where had you been prior to going to this 1958 Plymouth automobile? A. Parked in a gas station at Hamilton and East Main.

Q. And from the gas station, could you see this automobile? A. I could, sir.

Q. Which seat was Mr. Williams seated in, the front seat or the back seat? A. The front seat.

Q. And on the driver's side or the passenger's side? A. The passenger's side.

(92) Q. And would that be the side closest to the sidewalk on the north side of Hamilton Street? A. Yes, sir.

Q. Now, how did you approch that vehicle, Sergeant? A. I walked diagonally from the gasoline station across Hamilton Street, around the front of the vehicle to the passenger's side of the vehicle on the sidewalk.

Q. What did you do when you arrived at the passenger's side of the vehicle? A. I tapped on the window and told the occupant to open the door.

Q. And what happened at that time? A. He rolled down the window of the door.

Q. And did you do anything when he rolled down the window? A. I reached in the vehicle.

Q. Sergeant, what did you do? A. Removed a .32 Army Special Revolver from his waistband.

Mr. Green: May it please the Court, I would like to state for the record, that this was a subject of a motion to suppress. I object to the admission of any evidence with respect to materials taken from this automobile on the same grounds that were stated at the time this motion was argued before your Honor on April 4th, 1967.

And I do so for the purpose of preserving our rights with respect to an appeal. And I wonder if the objection could stand with respect to all of the (93) testimony with respect to items taken from this automobile, otherwise, I of course would have to interrupt and object.

The Court: Your objection is overruled. You may have an exception.

Mr. Green: May this objection stand with respect to all other items?

The Court: It may stand.
Mr. Green: All right.

Q. Sergeant, I am showing you an item which appears to be a pistol. I will ask you whether or not you can identify that? A. I can, sir.

Q. And what is that, Sergeant? A. This is the .32 Army Special Revolver that I removed from the waistband of the accused.

Mr. Green: I will object to the portion, the last phrase, the last phrase of the answer.

Mr. Browne: What was that?

Mr. Green: "It was removed from the waistband of the accused," those words. It actually isn't responsive. The witness was asked—

The Court: No, rephrase your answer. Your answer must be rephrased.

Q. Officer, before you reached for this gun, did you have any conversation with Mr. Williams at all? A. Other than to tell him to open the door, no, sir.

(94) Q. And at that time, why did you reach in and remove this gun? A. Well, I wanted to remove the gun before he used it.

Q. In other words, you were concerned about your own safety at that time.

Mr. Green: Your Honor, the State's Attorney is leading the witness.

The Court: You just testified that you saw a gun, and you removed the gun. That will stand, that portion.

Q. And then is that the gun that you removed? A. Yes, sir.

Mr. Browne: I will offer it.

Mr. Green: I object to the offer on the same basis.

The Court: Objection overruled.

Mr. Green: Exception.

The Court: You may have an exception. Admitted and marked State's Exhibit B.

(The above described item was received in evidence and marked as State's Exhibit B.)

Q. Did you do anything after removing the gun from Mr. Williams? A. I placed him under arrest.

Q. Did anyone else arrive at the scene, sir? A. Yes, two officers that I had summoned prior to seizing the weapon arrived.

(95) Q. And do you know their names? A. Officer Krusinski and Officer Sharnick.

Q. And at what point did they arrive? A. After I had removed the weapon from the accused.

Q. And after the accused was placed under arrest, what was done? A. Well, I advised him of his constitutional rights, and then a further search of his person in the vehicle was made.

Q. Now, just exactly what did you advise him of? A. I advised him that he was under arrest, that he wasn't obligated to make any statements whatsoever, that if he did they would be used, would probably be used, against him; that he could have an attorney before he answered any questions; that if he couldn't afford one, the State would supply him with one.

Q. And that was done right on Hamilton Street, sir. A. Right on Hamilton Street.

Q. And were the other officers present at that time? A. They arrived shortly after that, yes.

Q. Now, was Mr. Williams searched at the scene there on Hamilton Street? A. Yes, he was.

Q. And who conducted that search? A. Myself and the other two officers.

Q. And did you find anything? Did you personally find anything on his person? (96) A. Yes, I did, sir.

Q. And what is that, sir? A. I found a small jar in his right hand coat pocket, leather coat pocket.

Q. Showing you a small, what appears to be an Alka Seltzer jar. Can you identify that, Sergeant? A. Yes, I can.

Q. And how are you able to identify it? A. By my initials on the label.

Q. And what is that? A. This is a small empty jar of Alka Seltzer. It contains a number of balloons with a substance in the balloons.

Q. And is that the jar you are referring to that you removed from Mr. Williams' right pocket? A. It is.

Mr. Browne: May this be marked for identification, your Honor?

The Court: Marked Exhibit C for identification.

(The above described items was marked as State's Exhibit C for identification.)

Q. Now, what was inside of the jar, Sergeant? A. A number of rubber balloons, which contained six cellophane packets of a white substance.

Q. And if you will examine the jar, sir, are those the type of balloons that you are referring to? A. Yes, sir.

Mr. Green: Your Honor, at this time I must once (97) again state for the record that I believe these are among the items that were the subject of our

motion to suppress, and I object to their admissibility in reference to these proceedings for the same reasons.

The Court: Objection overruled.

Mr. Green: May I have an exception?

The Court: You may have an exception.

Q. Sergeant, referring to what has already been marked as State's Exhibit A for Identification, the large manila envelope, and referring to a small white envelope contained therein, showing you what appears to be a cellophane package or envelope, can you tell us whether or not that is the type of envelope that was contained in the ballons inside of the Alka Seltzer jar which was inside of the right coat pocket of Mr. Williams? A. It is, sir.

Q. And, incidentally, Sergeant, is there any marking of yours on that? A. There is.

Q. What marking would that be? A. My initials.

Q. And can you tell us whether or not that was one of the—is there any way you can tell whether or not that was one of the packets found inside the balloon which was inside of the Alka Seltzer jar? A. I believe it is, sir.

Mr. Green: I object once again for the same reason. (98) I hesitate to be repetitive.

The Court: Wait until he offers it.

Mr. Browne: I am not offering anything.

Mr. Green: All right. Are you going to offer it now?

Mr. Browne: Not right now.

Q. Did you do anything further at the scene, sir, on Hamilton Street? A. Yes, sir, we searched the vehicle of the accused.

Q. And did you, yourself, find anything in the vehicle? A. A machete under the front seat.

The Court: Pardon me just a minute.

Mr. Browne: Would your Honor like that last answer read?

The Court: Yes. Would you read the last question?

Mr. Browne: The last question and answer possibly, Mr. Schreff.

(Whereupon the question and answer were read by the Court Reporter.)

Mr. Green: There was an objection, your Honor.

The Court: Objection overruled.

Mr. Green: Exception.

The Court: Noted.

Q. Incidentally, Sergeant, referring back to State's Exhibit B, this pistol, would you tell us whether or not that was loaded when you examined it? A. It was fully loaded, sir.

(99) Mr. Green: Same objection.

The Court: Objection overruled.

Mr. Green: Exception.

The Court: You may have an exception.

Q. Sergeant, are you able to identify that? A. I am, sir.

Q. And what is that, sir? A. The initials "S" and "C" on the handle.

Q. And how were you able to identify that, Sergeant? A. By the initials "S" and "C" on the handle, which I placed there.

Q. All right. And was that brown paper wrapping on the blade at the time that you found it? A. No, sir.

Q. That is something that was added either by yourself or the Police Department. A. That's right, sir.

Mr. Browne: I will offer this as a State's Exhibit, your Honor.

Mr. Green: I object.
The Court: Objection overruled.
Mr. Green: May I have an exception?
The Court: You may have an exception.

(The above described item was received in evidence and marked as State's Exhibit D.)

Q. On which side of the front seat was that machete, Sergeant?

(100) Mr. Green: I don't think it has been established that it was on the front seat, your Honor.

Q. Where did you exactly find the State's Exhibit D, Sergeant? A. Under the front seat, passenger seat.
Q. That's the side on which Mr. Williams was seated. A. That's right, sir.
Q. Was anything else found on Mr. Williams' person? A. Yes, sir.
Q. And what was that, sir? A. It was—

Mr. Green: Objection.

A. —twenty-one packets.

Mr. Green: Objection, if your Honor please.
The Court: He hasn't identified it yet, as to what he found.
Mr. Green: Objection to the question.
I object to the question itself as to what was found on Mr. Williams' person once again for the same reason.
The Court: You object to the question as a leading question?
Mr. Green: No, I object because of the motion to

suppress and the reasons that the items that were found—

The Court: We haven't gotten to the items yet.

Mr. Green: I am fearful, as has often happened, (101) that it may be too late as far as the record goes. I think all too many of us have gone to the Supreme Court and have found that our objections are not timely.

The Court: To be safe, overrule the objection.

Mr. Green: May I have an exception?

The Court: You may have an exception.

A. Twenty-one packets similar to the packet that was found in this jar, this wallet.

Q. In other words, there were an additional twenty-one cellophane packets. Is that right? A. That's right.

Q. Now, removing from State's Exhibit A for identification a smaller white envelope, Sergeant, I am showing you a number of small cellophane packets. I am going to ask you whether or not you are able to identify those in any way? A. I am.

Q. And how are you able to identify them, Sergeant? A. By my markings on them.

Q. And would you tell his Honor, please, what your marking is on there? A. I put on my initials your Honor.

The Court: On each one individually?

The Witness: On each one individually.

Q. And you marked each of those twenty-seven packets with your initials. Is that right? A. That's right, sir.

Q. And there were twenty-one taken from the wallet. (102) A. Yes.

Q. And the other six were in the Alka Seltzer jar. A. That's right.

Q. And what did you do with these after they were

marked, Sergeant? A. I turned them over to Officer Sharnick.

Q. And he was another uniformed man at the scene? A. Yes.

Q. Did you see those items at all after they were delivered to Officer Sharnick on that morning? A. I ordered him to take them to Sgt. Barrett at the Special Service Division for analysis.

Q. And do you know whether or not the gun, State's Exhibit B, and the State's Exhibit D has been in the custoday of the Bridgeport Police from that date on? A. They have.

Mr. Green: Objection, if your Honor please.

The Court: If you know. Do you know of your own knowledge?

The Witness: I turned them over to the record division and got a receipt, your Honor. I turned the articles over to the record division, received a receipt, surrendered that receipt today and brought the articles here to Court.

Q. Both of these items additionally bear your markings made on October 30th. A. That's right.

(103) The Court: Do you object to it?

Mr. Green: I don't quite get it. As I understood it, it was given to Officer Sharnick and ordered taken—

Mr. Browne: No, that's the packets, 27 packets, I believe.

Mr. Green: What do you have reference to now?

Mr. Browne: I am now referring to the gun.

The Court: And the machete.

Mr. Browne: And the machete.

Mr. Green: Was there testimony that they were filed with the record division?

Mr. Browne: Yes.

Mr. Green: Is that right?

The Witness: Yes.

Mr. Browne: You may inquire.

Cross Examination by Mr. Green:

Q. The balloons you testified to were found where? A. In this jar.

The Court: Referring to what, State's Exhibit what?

Mr. Green: State's Exhibit C for identification.

The Court: All right.

Q. And this was after you found the pistol. Is that right? A. That's right, sir.

Q. And thereafter, you searched this accused. (104) A. Yes, sir.

Q. And you found the wallet. A. Yes, sir.

Q. You also searched the automoible. A. Yes, sir.

Q. And this was after he was well under arrest? A. After he was under arrest, sir.

Q. You placed him under arrest after you found the pistol. A. Right, sir.

Mr. Green: I have no further questions.

Redirect Examination by Mr. Browne:

Q. Why did you remove the pistol before you placed him under arrest? A. I didn't want him to use the pistol on me, sir.

Mr. Browne: Nothing further.

Recross Examination by Mr. Green:

Q. Why didn't you place him under arrest immediately, Officer? Let me rephrase that question.

On the motion to suppress, you testified that you were looking for corroboration about the report that you had gotten. Isn't that true? A. I don't recall making that statement.

Q. You don't recall making that statement. You don't remember that? A. I'm afraid not, sir.

Q. But nevertheless, you went over to this car and you (105) felt around this person's waistband, is that right? A. No, sir, I didn't feel around the waistband. I put my hand directly in on the revolver.

Q. Where was the revolver? A. In his waistband.

Q. Under his coat? A. Yes, sir.

Q. And you put your hand in under his coat. A. His coat was open, sir.

Q. You put your hand in. It wasn't visible from the outside. A. No, sir.

Q. And you pulled a revolver out. Is that right? A. That's right, sir.

Q. And then you placed him under arrest. A. Right, sir.

Mr. Green: I have no further questions.

Mr. Browne: No further questions.

The Court: You are excused.

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